

Minutes of the regular monthly meeting of the Planning Commission of the County of Henrico, Virginia, held in the Board Room of the County Administration Building, Parham and Hungary Spring Roads at 7:00 p.m., on July 15, 1999, Display Notice having been published in the Richmond Times-Dispatch on Thursday, June 24, 1999, and Thursday, July 1, 1999.

Members Present: Elizabeth G. Dwyer, C.P.C., Chairwoman, Tuckahoe  
Ernest B. Vanarsdall, C.P.C., Vice-Chairman Brookland  
C. W. Archer, C.P.C., Fairfield  
Mary L. Wade, Three Chopt  
John R. Marlles, AICP, Secretary, Director of Planning  
James B. Donati, Jr., Board of Supervisors, Varina

Members Absent: Debra Quesinberry, Varina

Others Present: John E. Merrithew, AICP, Principal Planner  
James P. Strauss, County Planner  
Mikel C. Whitney, County Planner  
Judy Thomas, Recording Secretary

Others Absent: Randall R. Silber, Assistant Director of Planning

Ms. Dwyer - This is our zoning meeting. We do have some plans of development and subdivisions before us, this evening. I guess we have no POD's. We do have three subdivisions.

Mr. Merrithew - Yes ma'am.

Ms. Dwyer - Mr. Secretary, I believe everyone on the Commission is present this evening, with the exception of Mrs. Quesinberry.

Mr. Marlles - And she will be joining us later.

Ms. Dwyer - She's in route; trying to get here from Charlotte, I believe. Are there any members of the press here this evening? We'd like to welcome you from the Henrico County Leader. I'd like to welcome you this evening. All right, Mr. Secretary, we'll get started with the agenda.

Mr. Marlles - Good evening, Madam Chairman, members of the Commission. The first item of business tonight is the requests for deferrals and withdrawals. I believe Mr. Merrithew will be presenting that.

Ms. Dwyer - Good evening, Mr. Merrithew.

July 15, 1999

Mr. John Merrithew, Principal Planner - Thank you, Madam Chairman. We have two requests for deferrals and one withdrawal.

**C-46C-99**                      **Henry L. Wilton:** Request to conditionally rezone from A-1 Agricultural District to R-1AC One Family Residence District (Conditional), part of Parcel 177-A-40, containing approximately 51.46 acres, located at the southeast intersection of Elko Road and Old Williamsburg Road. A single-family residential subdivision is proposed. The applicant has proffered the overall density not to exceed 1 unit per acre. The Land Use Plan recommends Rural Residential, not exceeding 1.0 unit per acre.

They have requested a deferral until September 9, 1999.

Ms. Dwyer -                      Is there any one in the audience in opposition to the deferral of Case C-46C-99 to September 9<sup>th</sup>.

Mr. Merrithew -                      That's correct.

Ms. Dwyer -                      There is no opposition to the deferral. Do we have a motion?

Mr. Vanarsdall -                      I move that C-46C-99 be deferred for 60 days to September 10, 1999 at the applicant's request.

Ms. Dwyer -                      I believe that's September 9<sup>th</sup>.

Mr. Vanarsdall -                      September 9<sup>th</sup>.

Mrs. Wade seconded the motion.

Ms. Dwyer -                      Motion made by Mr. Vanarsdall, seconded by Mrs. Wade. All those in favor of the motion, say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

**Deferred from the April 15, 1999 Meeting:**

**C-13C-99**                      **Ralph L. Axselle for Wilton Development Corp.:** Request to conditionally rezone from A-1 Agricultural District and C-1 Conservation District to R-2AC One Family Residence District (Conditional) and C-1 Conservation District, Parcel 74-A-20, containing approximately 162 acres, located at the northeast intersection of Diane Lane, Old Sellers Way and Wilkinson Road. A single family residential development is proposed. The applicant has proffered a maximum density of 2.5 units per acre. The Land Use Plan recommends Suburban Residential 1, 1.0 to 2.4 units net density per acre.

Mr. Merrithew -                      They have requested a deferral until October 14, 1999.

Ms. Dwyer -                      Is there any one in the audience in opposition to the deferral of C-13C-99 Wilton Development Corp.? No opposition to the deferral. Ready for a motion.

Mr. Archer - Madam Chairman, I move deferral of C-13C-99 Wilton Development Corp. to the October 14, 1999 meeting at the applicant's request. Mr. Vanarsdall seconded the motion.

Ms. Dwyer - Motion made by Mr. Archer, seconded by Mr. Vanarsdall. All those in favor of the motion, say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

Mr. Merrithew - Thank you. The final item I would point out does not require Planning Commission action.

**Deferred from the March 11, 1999 Meeting:**

**P-4-99 Ralph L. Axselle for Wilton Development Corp:** Request for approval of a provisional use permit in accordance with Sections 24-12.1, 24-95 and 24-122.1 of Chapter 24 of the County Code in order to allow a controlled density subdivision in conjunction with rezoning Case C-13C-99 on Parcel 74-A-20, containing approximately 162 acres, located at the northeast intersection of Diane Lane, Old Sellers Way and Wilkinson Road. The site is zoned A-1 Agricultural District and C-1 Conservation District.

This case has been withdrawn by the applicant. That's all the deferrals I have on the agenda. Thank you.

Ms. Dwyer - Thank you, Mr. Merrithew.

Mr. Marlles - Madam Chairman, the next item on the agenda is a subdivision that was deferred from the June 23<sup>rd</sup> meeting—Park Meadows at Twin Hickory.

**SUBDIVISION (Deferred from the June 23, 1999, Meeting)**

**Park Meadows at Twin Hickory (June 1999 Plan) Youngblood, Tyler and Associates for H. H. Hunt Corporation:** The 13.15-acre site is located on the south line of proposed Old School Road 705 ft. west of proposed Twin Hickory Lake Drive on part of Parcels 27-A-5A, 26-A-31 and 26-A-27A. The zoning is R-3C, One-Family Residence District (Conditional). County water and sewer. **(Three Chopt)**  
33 Lots

Mr. Marlles - Mikel Whitney will be presenting the staff report.

Mrs. Wade - Excuse me, Madam Chairman, did you ask if there were any other deferral requests from the floor?

Ms. Dwyer - No. I didn't ask for any other deferral requests on the zoning cases. Are there any other deferral requests anyone would like to make this evening on motion of the applicant? I don't see any.

Mrs. Wade - Any other deferral requests she's asking?

**C-49C-99 Andrew M. Condlin for R. Earl & Gail Johnson:** Request to conditionally rezone from A-1 Agricultural District to O-1C Office District (Conditional), part of Parcel 57-A-66, containing 2.252 acres, located on the south line of Three Chopt Road approximately 232' east of the intersection of Three Chopt and Church Roads. Office use is proposed. The use will be controlled by zoning ordinance regulations and proffered conditions. The Land Use Plan recommends Office.

Mr. Anton J. Stelly - Yes. I represent Water Tower Associates. And we're here on the last item on the agenda; C-49C-99. Mr. Condlin represents the applicants who are Earl and Gail Johnson. I represent Water Tower Associates which is an adjacent landowner. And they did not receive notice until today of this. I submitted a letter. I hand delivered it this afternoon requesting that the matter be deferred to allow my principal time to look at the plans and decided whether or not they wanted to oppose or not.

Ms. Dwyer - Sir, you're not the applicant?

Mr. Stelly - No. I'm not.

Mr. Vanarsdall - Was that Mr. Cantor's property?

Mr. Stelly - Yes. It is.

Mr. Vanarsdall - He called me.

Ms. Dwyer - And this is the property, I guess, on the northeast corner of Church and...

Mr. Stelly - I think its really on Three Chopt Road. It's on Three Chopt. It's across the street from Mr. Cantor's property, which is the shopping center strip.

Ms. Dwyer - So, you're an interested party who would like to see the case deferred?

Mr. Stelly - Yes.

Ms. Dwyer - And you did not receive notice? Was notice sent? Do we know?

Mr. Stelly - I called the Planning Commission Office this afternoon, and was told that notice was sent out on July 8<sup>th</sup>. They checked their records. I thought the notice they were referring to was notice that was required. I thought that was kind of late to be sent out. After I drafted a letter, which I hand delivered this afternoon to the Commission offices, Mr. Cantor called and said they'd just gotten the letter from Mr. Condlin who represents the applicants. It was a letter dated July 1<sup>st</sup>. It was mailed July 2<sup>nd</sup> to Old Cox Road Associates, which is the former owner.

Water Tower Associates bought out the interest of the former owner. I don't know why the records hasn't been changed to reflect that. Apparently, they have not. And the address that the paper work was mailed to by Mr. Condlin, and, presumably, by the County, is no longer a valid address, and it was forwarded to them today. I attached it to my letter—a copy of the letter.

Ms. Dwyer - The notice that's required is not notice from Mr. Condlin, but notice from the County.

Mr. Stelly - Correct. That has not been received.

Ms. Dwyer - Do we have anyone on staff who can...

Mr. Merrithew - Madam Chairman, a notice for the property was sent to the property owners whose names appear on the tax assessment records in the County, as required by the State Code.

Ms. Dwyer - Okay. So, that explains the address.

Mr. Merrithew - I believe it would be the property owner's obligation to make sure the records in assessment are correct in terms of ownership and they have not made that change yet.

Ms. Dwyer - All right, thank you, sir, for your input. As you know, an adjacent property owner can't request a deferral. So, it's up to the Planning Commissioner or the applicant to defer a case. I'm just explaining...

Mrs. Wade - He can request, but not...

Mr. Stelly - Thank you.

Ms. Dwyer - Thank you for clarifying that. Mrs. Wade, would you like to hear from the applicant's attorney?

Mrs. Wade - I presume he would oppose this request?

Mr. Condlin - That is a correct presumption. We actually sent a notice on June 1 and July 2<sup>nd</sup> of neighborhood meetings. And I've got copies of the tax records here with me in preparation for this request of what was located on there. I did speak with Mr. Cantor—Eddie Cantor, Mr. Cantor about this issue. I told him as soon as he found out, which he saw by the sign, he called me. I said I'd be happy to meet with him, and he said he didn't want to meet at that time. That was a couple days ago. And didn't have time to meet, so.

I think its unfortunate. We would like to address their concerns. But it is a shopping center across the street. I think, quite honestly, I think they probably did know of our plans at that point. At least, we thought they did, since we're a tenant of theirs already, and we gave them notice of our movement.

Ms. Dwyer - Could you state your name for the record, please?

Mr. Condlin - Oh. I'm sorry. Andrew Condlin from Williams, Mullen.

Mrs. Wade - I have had other people who were interested in having the case deferred for one reason or another. I know you had several meetings out there. By the time, well, one of them I think I was notified about. Maybe one of them I had a conflict. The others weren't included at all. And I'm not sure that I am really comfortable making a recommendation. There still are some unanswered questions. And it is quite a bit of question in the neighborhood about it, which is resulting in opposition that might not exist if they had more information. And so, for that reason, I would be in favor, I think, of deferring it for a month. And I understand there was a walk around the property out there, which I did not participate in. I've driven through there, but it would be helpful to walk about and see for myself.

Mr. Condlin - That walk through was when you were on vacation, as well. They had that week off. And that's when we set the date at that hearing. We did have four public meetings. I think, and again, I'm not going to speak for some of the folks, but I believe the homeowners association immediately adjacent, we were not aware of any opposition. And they just, I believe, formally voted to oppose the case last night, I believe, in the last few days.

Mrs. Wade - Yes. I don't think they are here to support your case this evening. I just have the feeling, perhaps, if they had some questions answered, they might certainly be better informed about it.

Mr. Condlin - I can only say my client, unfortunately, had an emergency and could not be here, and he did not give me permission to defer the case on my own accord. He thought that we needed to go forward; that we've answered all the questions we have had. Three with the Coles Way; one generally with the walk around, and then another adjacent property owner. We met with them, as well, outside of Coles Way. So, that's a total of four. I believe we've had an opportunity to answer all questions; discuss things. I really can't envision what else; they may disagree with the case and the use, but I just don't see what we can accomplish any more as far as answering questions goes.

Mrs. Wade - Granted, the request is for Office zoning. And day care is allowed in Office zones, but this is not your everyday office situation. This day care facility is not. So, for that reason, I, for one, and I think the neighborhoods, too, feel that they need a little more in the way of detail about exactly what it is, is proposed.

Mr. Condlin - Yes.

Mrs. Wade - Because some of the questions they have and I have, too, I'm not sure have been answered satisfactorily. So, I would be in favor of deferring it for a month. I know they have come out. I really hadn't determined which was the best course of action until toward the last minute. I would apologize for that, but I am always reluctant to say, certainly ahead, whether it's to be deferred or not. Now, we have another request from someone who wants information.

Mr. Condlin - I apologize that my hands are tied, and that my client wasn't able to be here to hear the discussion. But when I talked to him this afternoon, we talked about this very issue, and he had told me not to.

Mrs. Wade - So, he does not wish to?

Mr. Condlin - That is correct.

Mrs. Wade - Do you think he'd rather have it heard, tonight? Is this what you're saying?

Mr. Condlin - Yes ma'am. I'm prepared to go forward and discuss the case and present it tonight. I believe its probably going to be pretty much the exact same case next month as it is this month. We don't really think the issues will change. And, I believe, of course, I try not to speak for anyone else, but I do believe I know what the issues are. I'm not sure what response we can make other than the one issue we talked about with the buffer and the BMP, which we can respond, I think, positively.

Mrs. Wade - Okay. So, that's really not kind of what I've been hearing, but anyway, I would be more comfortable myself recommending or making a recommendation with a little more knowledge on my part. So, I would move, therefore, that it be deferred to; what's the August date?

Ms. Dwyer - August the 12<sup>th</sup>.

Mrs. Wade - That Case C-49C-99; is anybody else opposing deferral?

Ms. Dwyer - Is there any one else in the audience in opposition to deferring this case? No opposition.

Mrs. Wade - Okay. I move, therefore, that Case C-49C-99 be deferred until the 12<sup>th</sup> of August.

Mr. Vanarsdall seconded the motion.

Ms. Dwyer - Motion made by Mrs. Wade, seconded by Mr. Vanarsdall. All those in favor of the motion, say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

Mrs. Wade - And I would appreciate the opportunity to walk around, perhaps, with the applicant, and maybe a representative, not the whole neighborhood, because they're familiar with it more so than I. And I've driven up through there, but I have a feeling I need a closer look. Thank you. And thank you all for coming. We couldn't tell you really ahead how this was going tonight.

Mr. Vanarsdall - We enjoyed having you.

Mrs. Wade - Come back next month if you wish.

Ms. Dwyer - Well, Mr. Secretary, that takes care of our zoning agenda. It's a first.

Mrs. Wade - Well, we have a fairly light agenda next month, also. We're not backing up on anything.

Ms. Dwyer - We do have one more, don't we?

Mrs. Wade - Yes. We do have another zoning case. But he's already called; does he want to call this subdivision again--Park Meadows at Twin Hickory?

Ms. Dwyer - Let's go back and start at the beginning.

Mrs. Wade - Did we get an Autumnwood plat this time? It's on here, although its not shaded.

Mr. Marlles - The first item, tonight, will be a Subdivision Park Meadows at Twin Hickory. The Staff presentation will be by Mr. Mikel Whitney.

Ms. Dwyer - Is there any one in the audience in opposition to or would like to speak to the Subdivision Plan for Subdivision Park Meadows at Twin Hickory? No one.



Mr. Mikel Whitney, County Planner - Thank you, Madam Chairman. On the screen is the overall plan for the Twin Hickory development that we just received from the applicant. I reviewed it this afternoon with them. Highlighted on this overall plan, and I might add here, that this will apply to both this case, Park Meadows, and the following case, Autumnwood. Highlighted on this plan is the agreed upon sidewalk connections throughout this development, as far as Phase I is concerned. There will be some changes as far as previous conditional approvals, pertaining to Regal Oaks and Harvest Glen, that will be considered later this month to take care of what we've agreed upon as far as sidewalks.

These two cases were also deferred for another issue; the purchase of Parcel 27-A-2, which is presently owned by Beulah Davis. The applicant has given us a letter of intent from Mrs. Davis to sell a portion of her property to H. H. Hunt, which brings us closer to having the road interconnect from the intersection of Shady Grove and Twin Hickory Roads through Autumnwood Subdivision, the Beulah Davis property and then around to Twin Hickory Lake Drive.

For the Subdivision, Park Meadows, staff is recommending, because of the letter of intent, the property is specifically under contract, at present. An additional condition No. 16, I would like to read that into the record at this time. "The 12 lots on Park Meadows Court may receive final subdivision approval after owner provides the Director of Planning with a copy of an executed land purchase contract for part of Tax Parcel No. 27-A-2." With that, staff is recommending approval of this subdivision, as annotated, standard conditions, and the following condition I just read, No 16. I'll take any questions you may have.

Ms. Dwyer - Any questions for Mr. Whitney by Commission members?

Mrs. Wade - So, they can receive conditional approval? Just not final until...

Mr. Whitney - That is correct?

Mrs. Wade - ...an access somewhere.

Mr. Whitney - However, they can receive final approval in Park Meadows for the two cul-de-sacs closest to Twin Hickory Lake Drive, because there will not be the issue of a second point of access. However, the 12 lots to the westerly cul-de-sac would not receive final approval until an executed land purchase contract is received.

Ms. Dwyer - Mr. Whitney, could you show us where the road connection is you're referring to that, you know, we're going to be waiting for?

Mr. Whitney - The road connection goes from this point into the Beulah Davis property, down this direction through Harvest Glen, and this way through and along Park Meadows, and Twin Hickory Drive, which is at this point (referring to map).

Ms. Dwyer - So, there wouldn't be an additional connection, then, to Shady Grove from that other parcel?

Mr. Whitney - No. There would not. Mrs. Davis is keeping control of the front portion of her property where her house is, and she will have her frontage remaining on Shady Grove Road.

Ms. Dwyer - And there will be pedestrian access to the school from two points. Is that right?

Mr. Whitney - Yes. That is correct. Those points would be here in Hearthstone, and through Autumnwood, at this point, (referring to map).

Ms. Dwyer - And, that's which school?  
Mr. Whitney - It's the elementary school No. 5, I believe. I don't know if its been named as yet by the School Board.

Ms. Dwyer - And the other school, is that Short Pump? I can't read it (referring to slide)?

Mr. Whitney - The other school would be, in this location; the future high school.

Ms. Dwyer - Short Pump Middle.

Mr. Whitney - Short Pump Middle, then, is on Pouncey Tract.

Mrs. Wade - They don't show up very well on this (referring to map).

Mr. Whitney - At this point, from the Virginia Power Easement which has a trail coming down Twin Hickory Lake Drive. And the second point would be through Harvest Glen, at this point, to the full property at that point.

Ms. Dwyer - Does that actually connect to school property? Does that little triangular piece of property belong to the School?

Mr. Whitney - Common area.

Ms. Dwyer - Common area. Okay. And how will that pedestrian access work, and what will it look like? It's going to be between two individual parcels of land. Two homeowners will have a pedestrian access going between their properties to the school. Will it be a trail? Will there be a fence to keep people out of their yards, or how will that be planned?

Mr. Whitney - I would defer the answer to that question to the applicant. The representative is Webb Tyler, with Youngblood, Tyler & Associates.

Ms. Dwyer - Are there any other questions for Mr. Whitney before we...

Mrs. Wade - So, you're satisfied now with the system that they're indicating on this?

Mr. Whitney - Staff is satisfied with being closer to obtaining the road interconnect and the sidewalk network that we've achieved. We've come to agreement on that, and believe that it will be satisfactory.

Mrs. Wade - So, Mr. Tyler has bicycled...

Mr. Whitney - The 10-year old Mr. Tyler has bicycled all through here. Yes. In his mind.

Mrs. Wade - To be able to get around. Are these paths also for bicycles as well as pedestrians?

Mr. Whitney - That's correct.

Mrs. Wade - All right, and actually, that other question about access doesn't affect Autumnwood, but just Park Meadows, because Autumnwood has the access directly out to Twin Hickory?

Mr. Whitney - That is correct; Autumnwood being only 50 lots upon one point of access.

Mrs. Wade - Okay. Thank you.

Mr. Whitney - Any further questions?

Ms. Dwyer - No. It doesn't appear to be. Thank you, Mr. Whitney.

Mr. Webb Tyler - For the record, my name is Webb Tyler. I'm an engineer with Youngblood, Tyler & Associates, representing H. H. Hunt Corporation. You asked, "How do the pedestrian and sidewalk systems look like?" The sidewalks, as highlighted in yellow adjacent to public roads, (referring to slide), would be concrete sidewalks four to five feet wide within the County rights-of-way or common areas abutting those rights-of-way, owned and maintained by the Twin Hickory Foundation, which is the Twin Hickory Homeowners Association.

The trail system, as highlighted in green, which is not abutting a public road, but goes down power line easements or crosses over wetlands, or crosses across floodplains, is going to be

made up of asphalt, approximately five feet wide, within a common area that goes between lots such as in Harvest Glen or as in Saddleridge. It has a minimum of 12 feet of width, and is centered within that 12 feet, a 5-foot wide asphalt trail. And it is not our intention to fence it off. It may have some landscaping at entry points to identify the trail, as is common, so that people know where it's at. At entry points from public roads, or from the school, but it is not our intention to do any landscaping other than just the natural landscaping abutting the trails. They also will be owned and maintained by the Twin Hickory Homeowners Association or the Twin Hickory Foundation. This is a very similar, or exactly the same arrangement as is in Wyndham.

Ms. Dwyer - Thank you. Any questions for Mr. Tyler? No questions. Thank you, sir. Would you like to hear from any one else, Mrs. Wade?

Mrs. Wade - No.

Ms. Dwyer - Ready for a motion?

Mrs. Wade - Does anybody else wants to speak on this matter? I move the Subdivision, Park Meadows at Twin Hickory, the June, 1999 Plan be approved with the revised plan, at least the one that shows the pedestrian access points-sidewalks. Conditional approval, subject to the annotations on the plans, standard conditions for subdivisions with public utilities, and the following Conditions 12 through 16, and 16 having been read by staff with 12 lots on Park Meadows Court. They'll get final approval when second access is available to use the words he had originally. However, for the record, I move it be approved.

Mr. Archer seconded the motion.

Ms. Dwyer - Motion made by Mrs. Wade, seconded by Mr. Archer. All those in favor of the motion, say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

The Planning Commission granted conditional approval to Park Meadows at Twin Hickory (June 1999 Plan), subject to the annotations on the plan and the standard conditions applicable to such plan, and the following additional conditions:

12. The detailed plant list and specifications for the landscaping to be provided within the 25 foot-wide planting strip easement along proposed Old School Road shall be submitted to the Planning Office for review and approval prior to recordation of the plat.
13. Any necessary off-site drainage easements must be obtained prior to final approval of the construction plans by the Department of Public Works.
14. Prior to requesting the final approval, a draft of the covenants and deed restrictions for the maintenance of the common area by a homeowners association shall be submitted to the Planning Office for review. Such covenants and restrictions shall be in form and substance

satisfactory to the County Attorney and shall be recorded prior to recordation of the subdivision plat.

15. A County standard sidewalk shall be constructed along the south side of proposed Old School Road.
16. The twelve (12) lots on proposed Park Meadows Court may receive final subdivision approval after the owner provides the Director of Planning with a copy of an executed land purchase contract for part of tax parcel #27-A-2.

**SUBDIVISION (Deferred from the June 23, 1999, Meeting)**

**Autumnwood at Twin Hickory  
(Controlled Density)  
(May 1999 Plan)**

**Youngblood, Tyler & Associates, P.C. for H.H. Hunt Corporation:** The 21.38-acre site is located at the south line of proposed Twin Hickory Road at Shady Grove Road on parcel 27-A-3A. The zoning is R-2AC, One-Family Residential District (Conditional), and R-3C, One-Family Residential District (Conditional). County water and sewer. **(Three Chopt)** 50 Lots

Mr. Marlles - The staff report will be given by Mikel Whitney.

Ms. Dwyer - Is there anyone in the audience who is in opposition to, or is interested in speaking to, the Subdivision for Autumnwood at Twin Hickory? No one. Mr. Whitney.

Mr. Mikel Whitney - Thank you, Madam Chairman. Did everyone receive a copy of the addendum we prepared for tonight's meeting? Autumnwood has been repeated in that addendum with all the additional conditions that staff is recommending for this. I believe that the staff plan you received in your packet still had on it "The Staff has not completed its review." Over on your screen now is the final staff plan with all of the review completed.

Again, we are back to the sidewalk issue. I will point out to you that Condition No. 18 has been revised from what was on the original agenda. The sidewalk along the west side of Autumnwood Drive would be from the proposed Twin Hickory Road to the north line of proposed Autumnwood Way.

Again, backing up, we already will have obtained a sidewalk here (referring to slide) on Shady Grove and Twin Hickory Road. The sidewalk connect will be on the west side here, and connecting down through the subdivision to this point at the western boundary of the subdivision. The Beulah Davis property is over in here, which is where the road connects, that I discussed earlier, will be provided.

Condition No. 19 that was added, "Standard concrete sidewalks shall be provided along the south side of Autumnwood Way." That would be on the south side at this location (referring to slide), and that would be from Autumnwood Drive west to the subdivision boundary.

With that sidewalk issue being completed for Autumnwood, Staff is recommending approval of this plan. I will take any questions that you may have at this time.

Ms. Dwyer - Any questions for Mr. Whitney by Commission members? Mrs. Wade, do you have any?

Mrs. Wade - No.

Ms. Dwyer - Would you like to hear from the applicant, Mrs. Wade?

Mrs. Wade - No. I don't think so, unless he has additional comments.

Ms. Dwyer - All right, ready for a motion.

Mrs. Wade - I move Subdivision Autumnwood at Twin Hickory (Controlled Density, May 1999 Plan) be approved, as revised, subject to the annotations, standard conditions for subdivisions served by public utilities, and Conditions 14 through 19 as they appear on the addendum.

Mr. Vanarsdall - Second.

Ms. Dwyer - Motion made by Mrs. Wade, seconded by Mr. Vanarsdall. All those in favor of the motion, say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

The Planning Commission granted conditional approval to Autumnwood at Twin Hickory (Controlled Density, May 1999 Plan), subject to the annotations on the plan and the standard conditions applicable to such plan, and the following additional conditions:

14. The detailed plant list and specifications for the landscaping to be provided within the 25 foot-wide planting strip easement along Shady Grove Road and proposed Twin Hickory Road shall be submitted to the Planning Office for review and approval prior to recordation of the plat.
15. A County standard sidewalk shall be constructed along the south side of Shady Grove Road and Twin Hickory Road.
16. Any necessary off-site drainage easements must be obtained prior to final approval of the construction plans by the Department of Public Works.
17. Prior to requesting the final approval, a draft of the covenants and deed restrictions for the maintenance of the common area by a homeowners association shall be submitted to the Planning Office for review. Such covenants and restrictions shall be in form and substance satisfactory to the County Attorney and shall be recorded prior to recordation of the subdivision plat.
18. A County standard sidewalk shall be constructed along the west side of Autumnwood Way from proposed Twin Hickory Road to the north line of proposed Autumnwood Way.

19. A County standard concrete sidewalk shall be constructed along the south side of Autumwood Way from Autumwood Drive west to the subdivision boundary.

**SUBDIVISION (Deferred from the June 23, 1999, Meeting)**

**Tanfield (June 1999 Plan)** **E. D. Lewis and Associates, P.C. for Earl Thompson, Inc.:** The 18.2-acre site is located north of Shrader Road and Green Run Drive on part of Parcel 50-A-70 and 70NA. The zoning is R-2A, One-Family Residence District (Conditional), and C-1, Conservation District. County water and sewer. **(Brookland)** 21 Lots

Mr. Marlles - Mr. Jim Strauss will be giving the staff presentation.

Ms. Dwyer - Is there any one in the audience in opposition to, or who would like to speak to the Subdivision for Tanfield (June 1999 Plan)? We have opposition. Thank you. We'll hear from the staff planner, and then from the applicant, and then we will have time for the opposition. All right, give us a minute, Mr. Strauss, we have several documents to extract.

Mr. James Strauss, County Planner - I intend to help you walk through those documents. We've got a lot to hand out, tonight. And, if I could get the control room to help us with the monitor. We've got the wrong vicinity map displayed under the Tanfield file. Why don't we just get the document table, if we could get the control room to help us with that?

Ms. Dwyer - This is in the Varina District, so this isn't the one.

Mr. Strauss - This is the Brookland District we're going to be doing.

Ms. Dwyer - It says, "Varina."

Mr. Strauss - The monitor is incorrect.

Ms. Dwyer - Oh.

Mrs. Wade - The addendum says, "Brookland."

Mr. Strauss - Okay, if we're ready.

Ms. Dwyer - All right, Mr. Strauss.

Mr. Strauss - Thank you. Madam Chairman, members of the Commission, this case was deferred, at the request of the applicant, at the Planning Commission on June 23<sup>rd</sup>, in order to allow time for the County Attorney to determine the legal status of a proffer that staff believed had an affect on this application.

At that last meeting, staff distributed, with your addendum, a graphic exhibit, which was a part of Proffer 14 associated with Zoning Case C-60C-84. Now, you have a copy of that exhibit in the first packet we handed out to you, tonight.

This exhibit indicated an area of some 25 to 30 acres of Shannon Green that was to remain as open space. This exhibit was specifically referenced in Proffer 14, and, in effect, would preclude the construction of dwelling units within an area that was shaded in gray. And the proffer indicated, "...that the area shall be used exclusively for recreational purposes..."

Ms. Dwyer - Mr. Strauss, this is "Exhibit A, Tentative Plan-Shannon Green?"

Mr. Strauss - Yes. And there is an area, you'll see an area shaded in gray at the upper left corner. We don't have that on the screen at the moment. We've got the proposed conditional plan we're looking at tonight on the screen.

Mrs. Wade - This is the original—copy of the original?

Mr. Strauss - That's from the original file. It was handed out at the last meeting, and it's the one we're referencing right now. The applicant has challenged the validity of the proffer, because the rezoning application area for C-60C-84 did not physically include the area that was shaded in gray. And if Mikel Whitney will assist me, there's a small graphic I have from that zoning file, which, in "red," indicates the area of the rezoning case; 54.66 acres. And, when we get that in focus, (referring to slide), you'll see, that is the zoning case area for C-60C-84. You'll notice, at the top where I've annotated in red, on your monitor, the Tanfield Subdivision is outside that area.

Now, that area, which Tanfield is in, is zoned R-2A. It remained the same district that its always been; R-2A unconditioned. However, the Planning Commission, when they heard this case, they recommended denial. It went to the Board. Two days before the Board heard it, this Proffer 14 was offered by the applicant, and the exhibit was created. It was approved by the Board.

So, getting back to the history of this case...

Ms. Dwyer - Mr. Strauss, excuse me. Who was the owner of this property or the developer?

Mr. Strauss - At the time this zoning case was heard, the applicant was Stanley Britt Development Corporation, represented by a Mr. Conard Mattox. And they were rezoning the 54.66 acres.

Ms. Dwyer - Stanley Britt?

Mr. Strauss - Yes. Stanley Britt.



Ms. Dwyer - Represented by?

Mr. Strauss - Excuse me?

Ms. Dwyer - Represented by whom?

Mr. Strauss - Mr. Conard Mattox. And the reason for the application was to correct – They had a previous zoning case before this which capped the number of units to 1,315. What they were attempting to do is adjust the land area to account for roads that were dedicated. They were going to put the same number of units on a different land area and they were restructuring or reclassifying the zoning districts only in that portion (54.66 acres) of the overall 200 acres of Shannon Green.

Mrs. Wade - When was the R-2A part zoned R-2A? Do you know?

Mr. Strauss - It was never rezoned R-2A. It was always R-2A. It was just simply a residual piece that was initially part of Shannon Green, but never rezoned. It was part of the application first, but their application actually started in 1981, and it was 197 acres, and it included some existing R-2A area. Then the application was deferred in February of 1981 to revise Shrader Road extended. And it was reduced in area, at that time, in 1981 to leave out the R-2A area. I imagined what happened is, people kept thinking that it was always 197 acres, but when, in fact, the application area was reduced progressively through the rezoning history of this project. And we ended up with the 55 acres you see up there (referring to slide).

Ms. Dwyer - Why was that 55 acres excluded from the subsequent zoning case?

Mr. Strauss - This 55 acres has always been part of the zoning, but the R-2A didn't need to be reclassified because they were always going to keep it single family detached.

Ms. Dwyer - Okay.

Mr. Strauss - And they were not trying to change the unit type to multi-family or townhouse or anything else. They decided to keep the back portion of Shannon Green single-family detached.

So, what happened, is we ended up with a proffer to preserve some open space to allow for some recreational area to account for what looked like the increased density of the 1,300 units on a reduced portion. There was a discussion with the Planning Commission back in 1984, that if we're going to tighten up the density on the 55 acres, we ought to keep some open space as open space. The problem is that the proffer extended its reach outside of the application area. And that's the basis of the challenge of this proffer.

Now, as I was saying, since June 23<sup>rd</sup>, the County Attorney has had time to look at this proffer and its validity. At first, he indicated that there was a presumption of validity. But, recently, the

proffer was determined to be unenforceable because, indeed, it does include land outside of the application area. Therefore, the County Attorney has advised staff that the Commission should consider this application for conditional approval of a subdivision, without regard to Proffer No. 14, and with respect only to the applicable proffers that the regulations and the requirements of the Ordinance and the Subdivision Code.

Therefore, if the Commission should approve this application, staff recommends that, in addition to the standard conditions for subdivision, the following additional conditions should be approved. And what we've done, is we have discussed with the applicant additional conditions, which would afford some measure of protection to the neighborhood, and I can go through those. They're Nos. 12, 13, and 14, and they're on the annotated plan. Mikel, if you'd get the annotated plan back on the screen.

Condition 12 proposes the applicant shall dedicate a 44-foot right of way for Shrader Road. The balance of the 66-foot width, shown on the plan, shall be used for landscaping and screening and planting on both sides of Shrader Road Extended. The applicant shall submit a landscape plan for staff review and approval, prior to the approval of any final construction plans."

Moving on, Condition 13, "The applicant shall convey the unused portion of the Tanfield Subdivision property that is adjacent to Shannon Green Common Area as depicted on the staff plan to the Shannon Green Homeowners Association, to become a part of their common open area." And I'll try to indicate where those areas are.

This is the area that's not in lots. It's a thin strip at the top of this cul-de-sac. There's a knoll here that could be used as a recreational picnic area. This area here is not in this application. It's recorded as part of the common open area of Shannon Green. By having the applicant convey this over to the Homeowners Association, they would now have public street frontage, and this could be a useable recreation area for the Shannon Green Homeowners Association. Moving down to this side of the application, there's another area here that's not in a lot that could be conveyed to the Homeowners Association that's part of this common open area down here.

Mrs. Wade - And this is part of Shannon Green is what you're saying?

Mr. Strauss - This is currently a part of the subdivision before you, tonight. It's part of the Tanfield proposed subdivision, but it would be turned over to the Shannon Green Homeowners Association to be a part of their common open space system.

The last condition staff is proposing the Commission approve is Condition 14. "The applicant shall provide along the northern and eastern property lines which adjoin the Hoehns and Wright properties on their western and southern boundaries respectively, a 100-foot and a 40-foot scenic easement, and an undisturbed buffer. This buffer shall be recorded with the final subdivision, and the existing trees shall remain undisturbed with the exception of activity associated with the maintenance and installation of planting and fences." And that would be, in effect, the 100-foot

scenic easement along this side of the application area, adjacent to the Wright property over here (referring to slide).

With that, the staff feels comfortable recommending approval, since the County Attorney's finding, was that Proffer 14 is unenforceable. With that, I'll be happy to answer any questions that you may have. I believe Delmonte Lewis is here also. He's the applicant's engineer.

Ms. Dwyer - Any questions for Mr. Strauss by Commission members?

Mr. Vanarsdall - Mr. Strauss.

Mr. Strauss - Yes.

Mr. Vanarsdall - Go back up to the top of there where it says, "Common area for Shannon Green" (referring to slide).

Mr. Strauss - This area right here?

Mr. Vanarsdall - Yes. Exactly, how many acres are there? They keep speaking of it as 30 acres, don't they?

Mr. Strauss - Well, this isn't 30 acres. I would have to look at the file record. I have some of the files here. That was already platted. But 30 acres actually includes all of that gray area which goes beyond this application area. You would have to look at the gray area on that map.

Mr. Vanarsdall - The top part is the part that 14 covers?

Mr. Strauss - Excuse me. This here, I think, is about 18 acres; the application area, itself. So, that would include the flood plain area. There's also a flood plain associated with this application; the C-1C area up here.

Mr. Vanarsdall - All right, up at the top where it says, "Common Area," that's the part that 14 covers, isn't it?

Mr. Strauss - We thought 14 applied to all of this application area and acreage beyond, which is all around the area. You would be best to look at the previous small map with the gray shaded area. That showed roughly 25 to 30 acres of gray shaded area.

Ms. Dwyer - How much acreage is being developed that was promised to be undeveloped with this subdivision?

Mr. Strauss - Eighteen (18) acres out of 30, roughly. The balance of it being flood plain and RPA would not be developed.

Ms. Dwyer - Originally, 30 acres...

Mr. Strauss - Somewhere between 25 and 30. It was never submitted as an area. It was residual. We could do some arithmetic to find out what the exact area is.

Ms. Dwyer - Okay. So, originally 30 acres were promised to be undeveloped, and now we're developing 18 of those acres, which is all of the development?

Mr. Strauss - But not the entire 18. As you can see, there's open space associated with this application that remains as flood plain that's associated with the Hungary Creek drainage system. So, something less than 18. And, I'll have to defer any other questions, in that regard, to Delmonte. Any further questions?

Ms. Dwyer - Any more questions for Mr. Strauss? We may have some more questions for you as time goes on.

Mr. Strauss - I'll stick around.

Ms. Dwyer - Mr. Lewis, please come forward.

Mr. Marlles - Madam Chairman, since there is opposition, this will probably be a good time to let the audience know what the Commission's policy is in terms of time limits. It is the policy of the Commission, when there is opposition, to grant both the applicant and the opponents a total of 10 minutes, essentially, to present their cases. This time does not include any time responding to questions from the Commission.

For the applicant, it's usually advisable to reserve some time, Mr. Lewis, for rebuttal. You do need to indicate how much time you would like to reserve. We'll let you know when you're approaching that time.

To the opponents to the project, it's often a good idea to have a spokesperson or persons to make the most effective use of your time. But, I will try to warn you when you're coming to the end of your 10-minute time period. But, again, Mr. Lewis, do you have any time that you would like to save for rebuttal?

Mr. Delmonte Lewis - A couple of minutes. I'm sure I'm not going to use all of my time,  
Mr. Marlles.

Mr. Marlles - Whatever the balance of your 10 minutes is after your presentation?

Mr. Lewis - Yes. Say, four or five minutes.

Mr. Marlles - That's fine.

Mr. Lewis - Madam Chairman, and members of the Commission, my name, for the record, is Delmonte Lewis. I think the case has been explained to you pretty thoroughly. There's a couple of things I might add, that within that 25 or 30 acres, there has been some property conveyed to an adjacent subdivision to the north called, St. James Subdivision, to be included in those lots. There's also a parcel that was conveyed to the Cramblitt family. Mr. Cramblitt, and I have plats on that and I've researched that. And, the other thing I'd like to point out, on Shrader Road, Shrader Road is 66 feet wide now. The area for Shrader Road is 66 feet wide.

It was indicated that we are going to develop 44 feet. What we're actually are going to develop is 36 feet from face of curb to face of curb. That leaves us 15 feet on either side to do landscaping. And we have agreed with the staff that we will heavily landscape that for the whole length of Shrader that backs up to the townhouses. And, that that will go back to the staff at the time that we ask for construction plans approval.

We've agreed with all the conditions that staff has pointed out to you tonight. I want to thank them for their hard work we have done for the last two weeks, because when we deferred this thing for two weeks, I promised Mr. Vanarsdall that I would have all the answers in that time. Thanks to Joe Rapisarda and Mr. Tokarz and the staff, we have accomplished that. And, I think we've come up with a plan that is certainly workable. And, I want to, at this time, publicly thank the staff for that, and try to answer questions that you may have.

Mr. Vanarsdall - I'd like to add, Madam Chairman, that Mr. Lewis worked very, extremely hard on it too, because it's a most unusual case. I want to ask a question. I think one of the confusions of this case, and I think it would be for anyone, is when we had Shrader Road removed from the Major Thoroughfare Plan.

Mr. Lewis - Yes.

Mr. Vanarsdall - And so, the neighbors, the people who this affects, have always thought that there would never be a road there.

Mr. Lewis - And I can understand that.

Mr. Vanarsdall - That's the natural thinking. Can you explain how that takes place? You can remove it, but it still can be used as a road. And, in this particular case, you need it for your ingress/egress.

Mr. Lewis - The property never was conveyed as a right of way. It was set aside by the Comprehensive Plan; the Transportation Plan, which is a part of the Comprehensive Plan to be a collector road that would cross the creek and keep going. And, I don't know what year or what date, but that road was taken off of the Major Thoroughfare Plan by the Board of Supervisors.

Once that's done, that just means its not going to be a collector road going across the creek and is not on the Major Thoroughfare Plan.

Mr. Vanarsdall - Right.

Mr. Lewis - But the land still exists, and it can be used by the person who owns it for whatever use is appropriate. Did that answer what you asked?

Mr. Vanarsdall - That's where they misunderstood it. I know we have that from time to time and I would think, in the future, we would not necessarily use whoever it falls under, but make sure the people understand, that although its removed, it can still be used.

It reminds me of a stub street. Some people think a stub street can never be a street. And they live there for 20 years, and all of a sudden, they're running a road by it.

Mr. Lewis - Well, we certainly have that problem, Mrs. Vanarsdall.

Mrs. Wade - Not even 20 years.

Ms. Dwyer - Well, one of the reasons people might not have thought Shrader would be cut through is because of this Proffer 14, which stated that this would not be developed. Proffer 14 states that this area will be used exclusively for recreational purpose, and no dwelling units will be constructed within that. It seems to me that the Board accepted that as compensation for increased density within Shannon Green. And I'm concerned that now, we're in a position of approving a subdivision; and I understand that there was some confusion about the maps and what was included in each zoning case. But, I'm very concerned that the Board accepted this open area as compensation for the density of Shannon Green, and now we're being asked to approve a development on that very same property that's supposed to be common area.

Mr. Lewis - Well, I understand that, Mrs. Dwyer. I understand what you're saying.

When we looked at this piece of property, originally, I went to the Planning Staff and I looked at their zoning maps, and it clearly states that this property is R-2A. There's no "C" behind it. I have a letter from Mr. Webb addressed to Essex Corporation stating that this property can be developed with single family houses, and he lists the area involved and all of this.

It's unfortunate that, at the last minute, the last hour, that Stanley Britt offered this proffer, because maybe he was afraid he wasn't going to get his zoning. And, it wasn't looked at clear enough to realize that this proffer was not within the bounds of the zoning application.

Ms. Dwyer - Let me stop you right there. It was a part of an '81 zoning? Is that what I understood Mr. Strauss to say, but not a part of the '83 zoning, or '84?

Mr. Lewis - The 1984. The 1984 zoning...

Ms. Dwyer - That was probably the reason people were confused by the representation made by the developer.

Mr. Lewis - C-5C-81 was zoned by Owen-Sager & Associates in 1981. At that time, it was 151 acres more or less. And, that was for R-3, RTH, C-1, R-5 and B-1. Then in 1984, Stan Britt; he had purchased the property from Owen Sager, and in 1984, he requested 55 acres of that property be reclassified to R-5, R-6, and B-1. But, at no time, in either one of those cases, was any of this property within the bounds of my subdivision, shown as a part of the zoning case, in neither case.

Ms. Dwyer - So, the Board then was misled when they were told that this would be maintained as common area in compensation for the density of that zoning case?

Mr. Lewis - That's correct.

Ms. Dwyer - The Board was misled in 1984.

Mr. Lewis - When I took it before the County Attorney, he worked on this thing for almost two weeks. And that's when we received the letter from him that it was not a legal proffer, and that the Commission should look at this as a tentative subdivision, not as a part of a zoning case or a proffered condition.

Mrs. Wade - What was the date of that letter, Mr. Lewis?

Mr. Lewis - Letter from Mr. Webb?

Mrs. Wade - No. The letter you got saying that it could be developed from the County Attorney; the one you just referred to?

Mr. Lewis - This is Webb's letter. You have the letter there don't you? From Tokarz? I was talking about this.

Mr. Strauss - This is your letter, yes.

Mr. Lewis - I'm sorry, Mrs. Wade. I did not receive a letter from Tom Tokarz. Tom Tokarz called me.

Mrs. Wade - Oh.

Mr. Lewis - And he told me exactly what you read on the second paragraph of the staff recommendation dated July 14<sup>th</sup>.

Mr. Vanarsdall - Mr. Lewis, the Board doesn't record minutes as we do.

Mr. Lewis - That's correct.

Mr. Vanarsdall - Was there anything in the file; I understand they had quite a bit discussion at the Board level before they approved the case. Did you see anything in the file about that?

Mr. Lewis - No sir. There are no minutes with the Board meeting.

Mr. Vanarsdall - I know. They don't take any.

Mr. Lewis - There's nothing in there.

Ms. Dwyer - But this proffer was duly adopted by the Board; the proffer saying that this property would be—By "Duly adopted," I mean the Board thought at the time, that when they accepted this Proffer 14, this property would be maintained as open space/common area.

Mr. Lewis - I would assume that.

Ms. Dwyer - Now, that we realize the zoning case does not include that property, and so, technically, that proffer could not have been offered...

Mr. Lewis - It was illegally offered, in the opinion of the County Attorney.  
Yes.

Mr. Vanarsdall - At the Board level, that's right.

Mr. Lewis - At the Board level. Now, there's other things that come to pass about this that makes it more complicated.

When the applicant, Stan Britt, the applicant, was sent the results of the Board meeting, he was sent 13 proffered conditions. He wasn't sent the 14<sup>th</sup> proffered condition.

Ms. Dwyer - But it was still adopted.

Mr. Lewis - A year later, they sent him a letter saying, "We made a mistake. You should have gotten No. 14, too." I think that was because Stan Brit submitted to the Board two days before the meeting.

Ms. Dwyer - Well, and it was his proffer, so, certainly, he knew that proffer had been offered.

Mr. Lewis - No question about that. No question about that.



Mr. Vanarsdall - Tom Tokarz said, I mean the letter, you're right, was September of 1985 that picked up Proffer 14. Tom Tokarz says that was okay, but what happened, it did not change the zoning map. That was the serious part. The zoning map was never changed. If Earl Thompson hadn't looked at it 15 years later, it may have sat there for 50 years or 100 years. So, when you looked at the zoning map and you saw, R-2A with no "C" on it, you knew there was no condition or you assumed that.

Mr. Lewis - ...There was no conditions.

Mr. Vanarsdall - There was no condition or proffers. So, that's what happened there.

Ms. Dwyer - It just doesn't seem right to me that the Board should have accepted this common area as part of the zoning case, and then, now, we come back and we're being told that, "Oops, the Board was misled, therefore, we're going to develop this common area." I think it causes me concern in a number of areas. One, is we're all often asked to accept proffers at the last minute. That's probably what happened here is the attorneys and the staff didn't have an opportunity to review it, maybe to catch this discrepancy and the scope of the zoning case.

Mr. Vanarsdall - We will never know that.

Ms. Dwyer - It just seems to me wrong that we should allow this to happen, personally.

Mr. Lewis - I hear what you're saying, Mrs. Dwyer. I understand that, but I'm going by your County Attorney's advice. And, I feel like this Commission has to look at it with our advice. We're here tonight with 16 lots on the other side; we're going through Shrader Road. And four or five lots coming out in another direction. Mrs. Sylvia Wright, who owns to the east of us, thought that she had, by the proffer, a 100-foot buffer adjacent to her property line. We're willing to give her that 100-foot buffer, and record it on a subdivision plat so it's in the Clerk's Office at this time.

Mr. Vanarsdall - It's not recorded now?

Mr. Lewis - It's not recorded now. Not in the Clerk's Office. No sir. And we have a subdivision plan of Shannon Green over there that doesn't even show that 100-foot buffer. And, incidentally, its four acres, according to the map, Mr. Vanarsdall, of common space that we would be adding to the Association.

Mr. Vanarsdall - I remembered to ask that.

Mr. Lewis - And we have also agreed to convey the residual pieces, the pieces next to the road, to Shannon Green Civic Association/Homeowners Association so that they'll have road frontage and can utilize that property back in the back.

So, I know there was a mistake made, and I can't do anything about that. But, I think, the owner of that property has the right to develop it, and that's what we're here today for.

Ms. Dwyer - Any other questions by Commission members?

Mrs. Wade - I guess the only thing that bothers me about it is that one day I was hearing one thing was legal, and the next day, something else. And so, there seemed to be a lot of consternation, differences of opinion on different days about what was true and what wasn't. But, this, evidently, is the final word here, so.

Mr. Lewis - Well, Mrs. Wade, I met with Tom Tokarz yesterday. And I pointed out a case that I had in 1993, the Roxbury Corporation, where the County asked us to dedicate part of John Rolfe Parkway. Roxbury Corporation didn't own that part of John Rolfe Parkway. What happened in that case; and that's shown in the records. I met with Randy Silber and with Tom Tokarz at that point and said, "I'll be glad to proffer additional land for that in a different location." And I was told, "No. You can't proffer outside the area that you're zoned." So, what we did in that case, if you'll remember, we gave the County a deed to the property before we got the property zoned. I met with them and we went over that case, and, he remembered that, and maybe that had some bearing on his decision.

Mrs. Wade - Because that had been my question, what information had appeared in the 24-hour period involved here, and, so you're shedding some light on that. Thank you. But it stands to reason, I was here in 1981 and in 1984, too, but not that directly involved in what was a complex case and went through a number of changes, as you say. But, it did seem logical, that if he was going to increase the density in one place that he might compensate some place else. I mean it was never formalized.

Mr. Lewis - Now, that's an interesting thing, too, because he was allowed, what was it Jim, 1,190 units?

Mr. Struass - The cap, I believe, was 1,311.

Mr. Lewis - The cap was 1,311 that he had proffered. He has only developed 1,175. So, really and truly, whatever Stan Brit felt, nervousness, prior to the Board, he had no reason to be because he never got to that limit anyway, and even with our lot, you don't even approach that limit.

Mrs. Wade - As I recall, there was some confusion about this from time to time.

Mr. Archer - Mr. Lewis.

Mr. Lewis - Yes sir.

Mr. Archer - Does the approval of this subdivision, then, do anything at all to affect the validity of the existing subdivision?

Mr. Lewis - No sir.

Mr. Archer - Maybe I didn't phrase that right, but I don't know how to phrase it, to be honest with you. But, you understand what I meant?

Mr. Lewis - You mean, I'm not real sure, Mr. Archer. Are you saying that if we develop this, is it an impact on the other subdivision?

Mr. Archer - Well, does it have any legal impact?

Mr. Lewis - Legal impact? I don't think so, because right now, the person who owns that has no connection with Shannon Green whatsoever. Shannon Green Civic Association has no rights to that property whatsoever.

Mr. Archer - I think you understand what I meant. Okay.

Ms. Dwyer - Any other questions for Mr. Lewis by Commission members? thank you, Mr. Lewis.

Mr. Lewis - Yes ma'am.

Ms. Dwyer - All right, is there any one else who would like to speak in favor of this application? Okay. We'll hear from the opposition now, if you'll come forward. All those who would like to speak in opposition, if they'd come forward, and grab a seat near the podium. It will save time in between speakers.

Mrs. Sylvia Wright - For the record, my name is Sylvia Wright. I'm here tonight for two reasons. First of all, I am the major landowner adjacent to this property. And, actually, this project, Shannon Green is part of my family's property, the Bolton Estate. So, I have followed it as a family member, too, as the land has been developed.

Also, during this time, this particular project, Shannon Green, became the springboard for an association that became known as, "the Western Henrico Coalition." And, through this project, a number of associations were put together and did participate during the eighties in a number of zoning cases that were involved in this Open Space concept. So, I'm here, tonight, as an adjacent landowner, but I'm also here as the former spokesperson for that organization.

One of the things that I wanted to talk about is, I realize they have 14 files at the County. It's complicated. I don't totally agree with everything that's been presented as history here, tonight. I pulled out my own file before I came over here to look at it.

In 1981, there were 12 proffers that were filed with the County. Two of these proffers, Proffer No, 7 was for a fence which has not even been addressed tonight...

Mr. Vanarsdall - What was that for?

Mrs. Wright - A fence – a six-foot chain-link fence, which actually goes along the northern and eastern barrier of this property; my western and my southern. That was proffer No. 7. That was in 1981. And also, Proffer No. 12 in 1981 was what would establish the 100-foot and 40-foot buffers. That was supposed to be the commons area, and actually, the 100-foot buffer is on my side of the fence. You know, it's my land, 100 feet, then a six-foot fence that's there.

In 1982, Stan Britt did come back and it was Sager and Owens, too, that were involved in it, and they revised the concept. The original plan actually did call for R-2A all the way down to the creek. And, back in 1982, they revised it with the Open Space Concept; came in, pulled their units together, and did free up more space for this supposed to be common area.

In 1983, there was a Plan of Development for a townhouse project, specifically, this project right here in front of Earl Thompson's proposed area. And, at that time, a piece of the R-2A was used to align the R-5 project. They didn't quite have the shape needed. And, at that time, they proffered this Proffer 14 to leave the open space and to quiet the concerns of the community as a whole.

But, in 1983, you already had the 40-foot, the 100-foot buffer. And in 1984, they came back and revised Proffer 7 for this fence, so that it could be realigned to accommodate part of the actual preservation of the 100-year flood plain and to accommodate the County sewage. So, you should have a reference in 1984 of Proffer 7 being amended.

Ms. Dwyer - Mrs. Wright, let me just stop you, if I may.

Mrs. Wright - Okay.

Ms. Dwyer - One of the conditions that's been offered, tonight, presumably as a conception, is this 100-foot and 40-foot buffer, but you're saying that's already covered?

Mrs. Wright - Yes ma'am. That was covered in 1981. It was referred to again in 1984 through this fence, this Proffer 7. So, you have two different areas where it should be showing up in these records at the time.

Ms. Dwyer - Okay. So, those proffers are valid. Then this Condition 14...

Mrs. Wright - ...was what was kicked in 1983-84 when they came back for realigning and doing the townhouse that was there at the time. That's when 14 came in.

Mrs. Wade - But, did any of the later cases, then, change the proffers on the earlier ones?

Mrs. Wright - No ma'am. Sure did not. And, in fact, the fence was in place. As soon as they finished the townhouses and started the homes, they put the fence up. And, so, the fence has resided there for probably 15 plus years. It's been there for a long time.

Mrs. Wade - And that's Proffer 7?

Mrs. Wright - That's Proffer 7.

Mrs. Wade - And that fence is there?

Mrs. Wright - Yes ma'am.

Mrs. Wade - Okay, because I thought I had seen it.

Mrs. Wright - It's there today. Now, besides the fact that I'm the adjacent landowner, and I have followed this case, some of my primary concerns, tonight, is the detrimental effect that we're going to have on the concept of open space. This was one of the first projects like this. It's not the only project out here in Henrico County where we pool units together and set aside land with the idea that it would be bike trails, walking space, whatever, not necessarily active recreation.

The other fear that I have here is, when the community looked at this and the County of Henrico looked at this, and the allotment of building that took place there was in line with what road, services, utility easements, schools, public safety, you name it, is already supposed to be compensating that area. So, if we start backing into these open space areas, we are going to open space that was not part of the consideration for the development to begin with.

The third thing that concerns me here, of course, is, you may look at that and wonder why 20 acres are setting there next to a flood plain. But, as I mentioned, this is family property. And, at one time, it was over 200 acres. And, when you look at the entire parcel there, today, it houses the hospital, the Crestar operation, Shannon Green, London Towne. It has been very aggressively developed. So, when you look at that entire parcel of land, having 20 acres on the back side that abuts a flood plain is really not much of a compensation left over for the benefit of the community.

But I guess the thing that really bothers me more than anything with this is, Stan Britt made a commitment, in good faith, to a community. This was his intent. And, tonight, we're here to reverse it. And I question the effect and the long term if we reverse this one. What about the rest of the commitments that are out here for this open space? Do you have any other questions?

Mr. Vanarsdall - Yes. I have a question. Have you seen what the staff proposed?

Mrs. Wright - Yes, I have, Ernie. And the thing that's bothered me more than anything is the proposal never took into account any of the previous commitments, not just the

fact that its not even supposed to be built on, but there's the 100-foot, the fence that's there, the 40-foot; that type of thing. It's bothered me that there's just been this total open proposal on a piece of land.

Now, I realize I'm hearing things, like they're going to grant me my scenic easement. Well, it already exists. Not only, does it exist, I have a fence there. So, its kind of generous to grant something that already exists.

Mr. Vanarsdall - Do you like the part that Mr. Lewis explained that you would have the 100 feet and the 40 feet, and would be recorded?

Mrs. Wright - Well, Ernie, it was recorded. It was not only recorded in 1981, but it was referred to, again in 1984, with a proposal to amend Proffer 7 here at the Courthouse. So, its been recorded. I mean, I'm sorry they can't find the file in the Clerk's Office that says it, but in 1984, another case, I've got a xeroxed copy of the notice that I got about the proffer being amended and the hearing that took place over here. So, somebody had a record during that timeframe.

Ms. Dwyer - You're saying, whoever develops this property is already bound to recognize that 100 foot and 40 foot?

Mrs. Wright - Yes ma'am. They're bound to recognize the 100 foot, the 40 foot, the fence that exists, and, in my own opinion, should recognize the commitment of Stanley Britt when he said he had no intent of developing this.

Ms. Dwyer - Any other questions for Mrs. Wright?

Mrs. Wade - When was this zoned R-2A. Did God create it R-2A?

Mrs. Wright - Actually, that somewhat surprised me, because this cousin, which would have been a first cousin of my dad, farmed it. And, I know, at one time, we were all agricultural through there, and then just through shear County planning, at times, the County, itself, would come through and rezone land. And, like myself, I was actually up zoned from A-1 to R-2A without filing a request here. I was simply notified and asked if I objected to it.

Mrs. Wade - When was that?

Mrs. Wright - That would have been about the mid-eighties that I was notified. So, I wouldn't be surprised if they just came through with good land use planning; approached this cousin, and it went from A-1 to R-2A just through the shear planning.

Mrs. Wade - In the eighties?

Mrs. Wright - Yes ma'am, because I never filed one here. And, you'll see on my old parcels, that I'm A-1 and now I'm R-2A. I never asked for it.

Ms. Dwyer - Thank you, Mrs. Wright.

Mrs. Wright - Okay.

Ms. Dwyer - Did you have a question for Mrs. Wright?

Mr. Vanarsdall - No. Thank you, Mrs. Wright. Thank you. I'd like to know more, Mr. Lewis, if you don't mind, I'd like to know more about what she's saying about from agricultural to R-2A.

Mr. Lewis - R-2A?

Mr. Vanarsdall - ...without anybody knowing it.

Mr. Lewis - Mr. Vanarsdall, I think the R-2A was a part of the comprehensive zoning by the Board that covered the whole area. Lynn Lawrence owned this property, at one time. He sold it to Owen & Sagar, and Owen-Sagar sold it to Stan Britt. So, I didn't go back before Lynn Lawrence. But, the whole property in there was R-2A.

The first zoning to change it from R-2A to anything, was when Owen & Sagar submitted the 157 acres for rezoning. And they rezoned some C-1 to the north of this parcel. They zoned R-5 to the south of it, but they excluded this parcel; left it in R-2A unconditional.

When Stan Britt came along, the only reason he had part of that property that was originally zoned reclassified is because some of the roads design wriggled back and forth. That made some C-1 or whatever on this side, some R-4 on that side, whatever. So, they had to do some classification, plus, he was asking for a higher density, more density. So that was the reason for his rezoning. But, originally, all of it was R-2A.

Mr. Vanarsdall - Thank you.

Mr. Lewis - Okay.

Ms. Dwyer - Mr. Lewis, how do you respond to Mrs. Wright's statement that the 100-foot and 40-foot buffers are already an obligation under a pre-existing proffer?

Mr. Lewis - Ms. Dwyer, that proffer was made on property that was not within the bounds of the zoning case.

Ms. Dwyer - And that was in 1981. Is that right?

Mr. Lewis - That was the first zoning case on August 15, 1981. Yes.

Ms. Dwyer - They were making promises in 1981 also about property that was not subject to the zoning case. Is that right?

Mr. Lewis - That's correct. They made a proffer for the 100-foot buffer along this scenic easement or whatever they call it, along her western property line.

Mr. Vanarsdall - Thank you.

Mr. Sam Gage - My name is Sam Gage. I am the Vice-President of the second phase Shannon Green Townhomes Association. And, our Association, includes 185 units, of one of which one-quarter of which Bunclody, which is directly affected by this project.

There is no Shannon Green Civic Association. There are approximately 13 associations in the Shannon Green Subdivision. So, I'd like to clear that up, because I had heard that. They may create a housing association with this new development to deed the common area to. My Association has been asked repeatedly to take over this land. We've been asked for over 10 years.

We have turned it down primarily for two reasons, and I've been one of the more vocal opponents of accepting this land on behalf of the Board. One was the codicil. You know, it was our understanding, until tonight, that this land had to be open for recreational use to all residents of the Shannon Green Subdivision. And, as a member of the Board for my Association, I felt like we could not take on the liability and the maintenance of such property if we had to keep it open for everyone. Gap in tape...approximately right there. In that area right there, that you see on your map. It's the northeast corner of Bunclowdy Court property.

At that point, we discovered, many years ago, that there was a family dump site that must have been there going back a long, long time. And we had some leakage out of that site. It was not on our property. It would have been on this property right about in here (referring to slide), but it was leaking into our property.

We met with Mr. Vanarsdall at that time, and Mr. Glover. And the property, which we euphemistically called, "mud mountain," because they had taken all the topsoil out of Shannon Green and piled it up in a pile. We called it "mud mountain."

Mrs. Wade - You never got it back, I hear.

Mr. Gage - We never did get it back. What they did, is they came in, at that time, due to the efforts of Mr. Vanarsdall and Mr. Glover, flattened out the property, put proper drainage in it. One of the concerns that I have had is, as a member of the Board, I would not accept this property unless we could be held harmless for it. If it turned out to be a EPA problem, I did not want our Association, in the future, to have to take it on. So, there were two reasons: One was the codicil, and one was this potential dump site.



We would have gladly taken the 100 feet at the end of Shrader Road; the 66 x 100 feet if it could have been subdivided or broken off from the parcel. Because right now, its in “no persons” zone. My Association pays to have it maintained just out of voluntary – We want to see it done right.

We did not find out about this, ladies and gentlemen, until last week. I did not find out about the hearing until yesterday. We did not know this had been filed. We did not know of these plans. Tonight, was the first time I, and other homeowners have seen these plans.

I understand, having working for the County, that you did not have to notify the homeowners because it was not a zoning change.

Mr. Vanarsdall - Right.

Mr. Gage - However, given some of the potential conflicts that might have occurred, it would have been a good idea, we think, for the developer to have met with adjacent homeowners. So, I just wanted to thank Mr. Vanarsdall yesterday for his telephone calls. With Coleen Kenah, on my behalf, to find out as much information. And then, last night, I put out fliers to Bunclody, Donigil Trace, and Balidine Court residents, some of whom are here tonight.

Mr. Vanarsdall - I got quite a few calls from your flier.

Mr. Gage - I’m not going to stand in opposition to the development. There are homeowners here who have problems. I’m only representing the Board, tonight. We have not had a chance to even review the plans. So, we do not have a position on the development. But I did want to reiterate to you the fact that, for 10 years, we have met. And Mr. Glover met with us twice in that 10 years regarding different ways to use this land.

And, in all of these meetings, we were told that this land had to be open as recreation and open space for everybody in Shannon Green. And I had a problem with that for liability reasons. Thank you.

Mrs. Wade - Who was asking you to take it over?

Mr. Gage - The owner, the Bank of Essex, at one time. Mr. Glover held a couple meetings. One was at the Dumbarton Library a few years back. There was a plan at that time to build townhomes. I think it was two or three different rows in there. And we were asked again at that meeting, “Well, we can’t build anything. Do you all want the land?” Somebody has to take the land.

I went to the Director of the County Recreation & Parks. I have been to other County agencies asking if they would take the land. And, unfortunately, no one wanted it.

Mrs. Wade - But, the Bank of Essex seemed to think it had to be open, is what you're saying?

Mr. Gage - Yes ma'am.

Mrs. Wade - The current owners?

Mr. Gage - Yes ma'am. If we had known what Mr. Tokarz has ruled, then the only opposition I would have had would have been that potential dump site. And, once that was taken care of, I would have taken the land, just to keep it as open space.

Mr. Archer - Sir, was it ever determined that the waste material that was leaking, was it ever determined that it was environmentally unsafe?

Mr. Gage - No sir. It's off of our property, and it was not up to us to investigate that. It leaked onto ours. At that time, we went to Mr. Vanarsdall and Mr. Glover. They were kind enough to go back, I'm not sure who you got to do it, sir, but you got someone to go in there and flatten that out.

Mr. Vanarsdall - Public Works.

Mr. Gage - They put drainage in there.

Mr. Archer - You don't have any knowledge at all that it might have been environmentally unsafe then whatever it was that was leaking?

Mr. Gage - I remember, as a kid, that they had a dump site there at one time. I'm from southwest Virginia, and we used to have dump sites, too.

Mrs. Wade - Everybody did.

Ms. Debbie Barbuto - Good evening. My name is Debbie Barbuto. I am representing the Forest Green Homeowners Association. I am the current President, and I have a handful of my residents here with me. We are representing the Newross Court, which is on the far left side of your diagram. And this development also came to our attention just a week ago. And we also found out about the Board meeting. However, we have not been able to share the information with our homeowners who will be directly adjacent to this property.

So, I feel like, just like the gentleman before me said, that, we as homeowners that are directly adjacent to the property, are going to be affected. And, I don't feel comfortable in approving, or you know, giving the green light for a project like this.

From a personal standpoint, I know that the trees are a value to our neighborhood as a buffer. We just experienced Hunters Ridge being developed with 23 new homes on the other side of our

common area which is on the other side of our neighborhood. So, in my opinion, there is too much development. There are plenty of homes back there. I would like to see a balance of nature and peace and quiet and not additional development. Again, that's my personal opinion, and I have not had a chance to get the feedback from the homeowners that this will be directly affecting. So we would appreciate any consideration that County residents have as much say so as the County Attorney. Thank you.

Ms. Dwyer - Ma'am, could you spell your last name for us?

Ms. Barbuto - Barbuto.

Ms. Dwyer - Any questions for Ms. Barbuto?

Mr. Vanarsdall - Didn't your civic association have a meeting tonight?

Ms. Barbuto - This is a different one. There are a lot...

Mr. Vanarsdall - I talked to Margo McKnight. Do you know Margo McKnight?

Ms. Barbuto - No.

Mr. Vanarsdall - She said they were having a meeting tonight.

Ms. Barbuto - I understood there was a meeting. I don't know whose meeting that was.

Mrs. Wade - He said there are 13 different groups in there.

Ms. Barbuto - And we don't communicate with one another. We may now.

Mr. Vanarsdall - Y'all don't hang out together is what you're saying?

Ms Barbuto - We've tried. The neighborhood watch policeman has tried to get us together, believe me.

Mr. Vanarsdall - Thank you.

Ms. Barbuto - Thank you.

Ms. Dwyer - Is there any one else to speak in opposition to the case? Come forward, please.

Mr. Erin Criss - My name is Erin Criss. I am a homeowner on Buncloudy Court. And the main thing that worries me about this is the fact they're developing Shrader Road to

continue through that area, I guess it is that 66-foot wide area there. And, we bought that property, our house there because we thought that was not going to be developed. I'm sure that most people who live along there thought it was not going to be developed. And I'm speaking for my wife and myself. We would not have bought the property if we had known it was going to be developed. And, so, I think its very wrong for them to change the ruling that the Board had made in the past to develop this.

Mr. Vanarsdall -                   Where is your house?

Mr. Criss -                         I'm right there (referring to slide).

Mr. Vanarsdall -                   So, you're the first one...

Mr. Criss -                         It's the end unit right there.

Mr. Vanarsdall -                   Okay.

Mrs. Wade -                     So, none of the road's there now?

Mr. Criss -                         I'm sorry?

Mrs. Wade -                     So, none of the road is there now?

Mr. Criss -                         No. There's nothing there except just for an embankment. I will mention that is above the houses, I'd say probably a nine foot rise. People would be looking down into possibly our second floor windows and down into our family rooms.

Mr. Vanarsdall -                   Do you like the idea that they have to landscape up and down and make it a narrow road?

Mr. Criss -                         That means nothing to me. It really will not decrease the noise that much, especially, considering that you're still going to be having, for myself, not for the other homeowners through there. But, I still have this area right in here (referring to slide) that's still going to have—people can still see in there. I'm sure that when they're talking about developing, they're talking about developing along there, not down the other side of my property, landscaping that.

Ms. Dwyer -                         Thank you. Any questions for Mr. Criss? Thank you, sir. Any one else in opposition?

Mr. Arthur Eidelson -             My name is Arthur Eidelson. It's spelled, "Eidelson." I'm a resident on Bunclody Court. And I live right about there (referring to slide). You gentlemen has a photograph of Shrader Road showing where it ended and where you wanted to extend that. Could you display that photograph?

Mr. Strauss - This afternoon we took some pictures with a video camera of the Shrader Road area. I believe that's what you're referring to?

Ms. Dwyer - They're not talking about the G.I.S. then?

Mr. Strauss - Actually, its not an aerial. It's a ground level photograph.

Mrs. Wade - Snapshot.

Mr. Strauss - Thanks, John. Is that the one you're referring to?

Mr. Eidelson - That's the one.

Mr. Strauss - Okay.

Ms. Dwyer - So, this where Shrader Road would be extended between these two townhouses?

Mr. Strauss - This picture was taken at the current terminus of Shrader Lane. As you can see here, the townhouses, I believe that is what we knew as Section 22 and Section 21. The road would extend through this large berm here and there's trees, as you can see, on either side (referring to slide). This would be where Shrader Road would extend through. The subdivision that's under consideration is in this wooded area in the back.

Mrs. Wade - Well, will it be cut down and put the road level with what's west of this? I mean, are they going to build it up, or are they going to cut it down?

Mr. Strauss - Well, I prefer Mr. Lewis answer that, but I imagine to make the vertical transition, they would have to cut that berm down in order to arrive at a - the end of the road where the hammer head cul-de-sac is proposed. So, they'd be taking that earth out.

Mr. Eidelson - I simply came here tonight because I wanted to make a request that no decision be made concerning the applicant until the residents that live along the proposed extension of Shrader Road have a chance to understand the proposed construction and that the applicant meet with the homeowners association, representing the residents.

I wanted to explain why that barrier is there. Right here (referring to slide). About two years ago, a car went straight. It didn't get very far. It ended up in our back yards at about there (referring to slide).

I'm concerned about, what's the speed limit going to be on that road? I'm not sure about the trees. That was mentioned earlier. That road is about level with our second story. I just have a lot of questions. And we didn't have time; I just found out about this last night. We didn't have

time to study what's being proposed. And, I think the residents need to have more time to understand what's going on.

Ms. Dwyer - Thank you, sir. Could you spell your last name for me, please?

Mr. Eidelson - It's Eidelson.

Ms. Dwyer - Thank you, Mr. Eidelson. Any questions for Mr. Eidelson by Commission members? Any one else to speak in opposition? We are about out of time.

Mr. Gordon Miller - I will be brief. My name is Gordon Miller. I live in Lurgan Place which is the townhouse community on the other side of the proposed extension of Shrader Road. Like many of the other homeowners, we only found out about this about a week ago. And, I think we'd all like a little more time, also, to consider the impact of this proposed development. That's it.

Ms. Dwyer - Thanks. Did you have some rebuttal, Mr. Lewis? Most of your time, I believe, was used by our questions. So, you have seven minutes for rebuttal.

Mr. Lewis - Mr. Vanarsdall, I'd like to answer one question that you had. Shannon Green, Section 16, is a controlled density subdivision. That's the subdivision right to our east. That's the subdivision that has the common area that we're going to add to.

Mr. Vanarsdall - Right.

Mr. Lewis - There's a restrictive covenant recorded with that subdivision saying that, that open space will be dedicated and given; and is given by this plat, to the homeowners association. And it's recorded.

To explain a little bit about the construction of Shrader Road, the mound that you see in there is fill material when they did excavation of part of that subdivision, or the townhouse project or whatever. They stockpiled that area in Shrader Road like they so many times do in a right of way. What we will have to do is, we're not going to be going on top of that road. We'll be grading that down and disposing of that material to make it comply with the Public Works criteria as far as road grades are concerned.

And, I'll also like to point out, that again, that we're only using 36 feet from curb to curb. And that is as wide as that road will be. But it will not be that high. It will be cut down and lowered significantly from that, because we have to meet the grade of Shrader at the intersection.

I would like to just summarize by saying that we're not looking at a zoning case tonight. We're looking at a tentative plan. We have worked diligently to make this the best plan we can. And we have done everything humanly possible to see that is done for the citizens out there, just as we do in any subdivision that I have anything to do with.

The Essex Mortgage Corporation certainly didn't offer to my client free. He's paying a substantial amount of money for it. I think he has a right to develop it. And I ask this Commission to please approve this plan, tonight, so we can, you know, continue on with the development of it. Thank you.

Ms. Dwyer - Any questions for Mr. Lewis?

Mr. Vanarsdall - Mr. Lewis, let me start from the beginning. You're right, this isn't a zoning case. Since I've been on the Commission, I've never had a case like this. It's almost unbelievable to me that this could happen back in '84 and two wrongs don't make a right. The thing that concerns me, tonight, it took me awhile to understand what we were doing. The thing that concerns me tonight is the people who are in the audience know the least about what we're doing than anyone in the auditorium and its their community. And there are reasons for it. They weren't notified, and they're not supposed to be. And I want to tell you, you're not supposed to be notified, and I don't mean that in the wrong manner.

With rezoning cases, you are. Subdivisions and Plans of Development, there is no law or no criteria for doing that. That doesn't mean it would be anything wrong with that.

I'd like to defer this for two weeks and have a meeting with all these people, because what you have here is a big improvement. What you just said was an improvement. The road is not going to be on top, as one of the gentlemen thought. But, they don't understand all this. And you'll have to admit, Mr. Lewis, this is an unusual case. There is a lot of questions. And Sylvia Wright has been following this for a long time. I don't feel good about it, and I don't feel like we're going to give the people a fair shake. Although this isn't a rezoning, I just don't think I'd be doing my part if I recommended it for approval or denial. And I'd like to defer it for two weeks or 30 days and have you and everybody meet with them, I'll meet, and explain what we're doing and then go from there.

Now, I want y'all to understand, what they're doing is legal. It's above board. It's in accordance with the County Code, and so forth.

Mr. Lewis - Mr. Vanarsdall, I've been coming before this Planning Commission 40 some years. And I have never wanted to hide anything, and I agree with you 100 percent. They know less about it than you and I.

Mr. Vanarsdall - That's right.

Mr. Lewis - And I want to make sure everybody understands, just as you do. I have worked diligently on it, and I will certainly accept a two-week deferral. I'd like for it to come up at the next Planning Commission meeting. Two weeks, I think we can do it. I promised you this time I'd have all the information in two weeks, and I think I lived up to that promise.

But, because there is some question and some concern, some knowledge not known by the citizens, I agree with you. And I would like to have two weeks.

Mr. Vanarsdall - Do y'all agree with that? Can you get together?

Mr. Lewis - And I'd like to get together at a convenient place to them with you there and maybe Mr. Glover, or whoever. I'd be glad to meet with them.

Mr. Vanarsdall - They can do it as soon after this meeting as possible. I don't mean tomorrow.

Lady from audience - (Not at microphone). May I make a comment, please, real quick? I think we're all aware of what he wants to do...We were told that this land was not going to be developed.

Mr. Vanarsdall - We don't want to argue the case now. That's over. I'm trying to make it so you can ask those questions and can understand it.

Mrs. Wade - Do you know when Essex Mortgage decided they were going to market this for development?

Mr. Lewis - What was the date? They have been trying to market it, because they have approached several people to purchase the property. And for various reasons that I do not know, they have not. A realtor came to my client, Mr. Thompson, who is in the audience today, and offered the property for sale. He had me investigate it and then came to a conclusion that they would agree to buy it. His attorney is also here tonight and he can back everything I say up as far as the contract is concerned. I do not know about offerings as a gift, I just don't know about that, but I do know it was offered for sale to my client.

Ms. Dwyer - And, so, Mr. Vanarsdall are you making your motion now?

Mr. Vanarsdall - All right, Mr. Lewis, again thank you.

Mr. Lewis - Yes sir.

Mr. Vanarsdall - And I thank y'all for your interest in coming. And I look forward to meeting with you at whatever time. Are you going to be the point man?

Mr. Lewis - Me? I'll be glad to. I will be outside immediately. And we'll find out a location. I'll get back with you.

Mr. Vanarsdall - I recommend that the Subdivision Tanfield be deferred for two weeks to the July 28<sup>th</sup> meeting. If we do it for two weeks, this will fall back on our POD



meeting—POD daytime meeting which is what this was supposed to have been to start with. Anyway, we'll work that out. My motion is to defer it to July 28<sup>th</sup> at the applicant's request.

Mr. Archer - Second.

Ms. Dwyer - This is at the applicant's request?

Mr. Vanarsdall - Well, I guess I can say that. I won't do that to you.

Mr. Lewis - I deferred it once. Now, it's your turn.

Mr. Vanarsdall - I'll defer it this time. This is a freebee.

Mr. Archer - I second, Madam Chairman.

Ms. Dwyer - There's a motion by Mr. Vanarsdall to defer this case our July 28<sup>th</sup> POD meeting which is a day meeting, begins at 9:00 a.m. Seconded by Mr. Archer. All in favor of the deferral say aye—all those opposed by saying nay. The vote is 5-0 (Mrs. Quesinberry absent).

Mr. Vanarsdall - Thank you.

Mr. Lewis - Thank you for y'all's indulgence.

The Planning Commission deferred Tanfield, (June 1999 Plan) to its meeting on July 28, 1999.

### **THREE CHOPT:**

**C-48C-99 James W. Theobald for Highwoods Realty Limited Partnership:** Request to conditionally rezone from M-1C Light Industrial District (Conditional) to M-1C Light Industrial District (Conditional), Parcel 28-1-B-100 (Innsbrook North Subdivision), described as follows:

Commencing at a point at the intersection of the S. line of Interstate 295 and the E. line of Nuckols Road; thence along the S. line of Interstate 295 N. 20° 10' 21" W., 79.14' to a point; thence N. 1° 22' 05" E., 79.12' to a point; thence N. 42° 11' 53" E., 511.01' to a point; thence N. 48° 02' 26" e., 663.86' to a point; thence along a curve the right with a radius of 1557.02' and an arc length of 118.65', subtended by a chord of N. 51° 01' 12" E., 118.62' to the place and point of beginning (P.O.B.); thence along the S. line of Interstate 295, along a curve to the right with a radius of 1557.02' and an arc length of 309.38'; subtended by a chord of N. 58° 53' 41" E., 308.87' to a point; thence N. 76° 33' 41" E., 273.85' to a point; thence N. 74° 42' 17" E., 1224.13' to a point; thence leaving the S. line of Interstate 295 S. 25° 33' 00" W., 269.71' to a point; thence S. 42° 26' 23" W., 397.80' to a point; thence S. 9° 44' 00" W., 400.00' to a point; thence S. 28° 45' 52" W., 249.13' to a point; thence N. 79° 39' 54" W., 1069.93' to a point; thence N. 42° 26' 23" E., 228.71' to a point; thence N. 44° 48' 38" W., 342.08' to the place and point of beginning (P.O.B.); containing 23.5 +- acres.

Mr. Marlles - Mr. Merrithew will be giving the staff report.  
Ms. Dwyer - Good evening, Mr. Merrithew.

Mr. Merrithew - Thank you, Madam Chairman.

Mrs. Wade - It occurred to me about an hour ago, we could have moved yours up.

Mr. Merrithew - Would you like to hear a presentation on it, or would you just like for me to answer questions?

Ms. Dwyer - Is there any one here in opposition to this case?

Mrs. Wade - Does the Commission have any questions on this?

Ms. Dwyer - I do.

Mrs. Wade - Oh.

Mr. Merrithew - I'll go ahead and explain it.

Ms. Dwyer - Please.

Mr. Merrithew - This application proposes to do two things: one, consolidate the proffers from four previous rezoning cases, and bring them into one new rezoning case. For the most part, the proffers that are applicable to that property today under the current conditions of current cases will continue to be applicable to the property.

What the applicant is proposing to do is allow some additional retail to occur on the property. Of the four previous cases, your staff report refers to two, but the applicant was kind enough to point out that there are actually four cases affected by this rezoning, to various degrees restrict retail development or prohibit retail development on the site.

The reason for the previous prohibitions and restrictions was a concern about traffic, and the traffic volumes that would be coming out onto Nuckols Road from this property. Their proposal is to allow some limited retail. They, specifically, want to allow food related retail, cafeteria, restaurant, potentially, and some banquet, catering-type of operation to occur as an accessory use to the office building.

There is already a POD approved on this site for an office building. And what they are doing is simply trying to add this food service operation as one of the uses in the building. Okay. The previous concern about traffic, we hope to address in the proffers by limiting the retail uses to what would normally be permitted in an O-3 District, which is 20 percent of the floor

area of an office building over 50,000 square feet in total area. And also restricting the types of signage that would be related to the retail restaurant or cafeteria use, as signs that would just help somebody find the cafeteria, if you will, or food service in the building and not stand-alone detached signs or large advertising signs.

The Transportation staff does not feel that there will be a significant, if any, increase in traffic as a result of allowing this limited food service in the office use on the site.

Mrs. Wade -                                So, basically, they're going to abide by the O-3?

Mr. Merrithew -                            They will abide by the O-3 with the exception that the catering and banqueting type of operations will not have to meet the 20 percent square foot limitation. The fixed use, the restaurant or the cafeterias will meet that 20 percent. They'd like to get out in the lobby and throw a party or whatever, a ceremony in the lobby, that might take more than 20 percent.

Ms. Dwyer -                                May I ask you a question at that point? There's really no limit to the square footage to be dedicated to catering, meeting, reception, banquet and outdoor entertainment, is that right?

Mr. Merrithew -                            That's correct.

Ms. Dwyer -                                So, they could build a large banquet hall?

Mr. Merrithew -                            That's not the intent, I don't believe. But its possible they could dedicate something larger than 20 percent, I guess to a banquet hall, if they chose to do that. What they do fix is the size of the kitchen area and the restaurant, whatever the fixed cafeteria area would be.

Ms. Dwyer -                                But they could have a kitchen associated with the catering and reception and banquet that wouldn't be limited to 20 percent.

Mr. Merrithew -                            The reception and the banquet would not be limited to the 20 percent. That's right.

Ms. Dwyer -                                Would that include kitchen facilities then?

Mr. Merrithew -                            The intent is cafeterias and restaurants. The wording is, "...Cafeterias and restaurants shall however be considered within the 20 percent limitation..."

Ms. Dwyer -                                But you could have a kitchen associated with a reception or banquet facility that would not be included within the 20 percent?

Mr. Merrithew - That may be possible by the language. Maybe the applicant can clear that up.

Mrs. Wade - Somehow I missed that in the meeting we had the other day. I asked, specifically, if this was going to conform to the O-3 requirements? And everybody said, "Yes." But, now, I'm hearing, "No."

Mr. Merrithew - For the retail and service uses...

Mrs. Wade - Okay.

Mr. Merrithew - ...other than food service, it does meet the O-3. And for restaurants and cafeterias, it does meet the O-3. The issue of receptions, and receptions being outside the building, or being in the lobby of the building, was what they wanted more flexibility with. Okay. That's the specific proffer at issue here. The rest of the proffers reflect the proffers that currently apply to the property that are still relevant to the property.

Mrs. Wade - But that type of use would be connected to the people who have businesses there, would it not? I mean you're not opening this up to the public, no?

Mr. Merrithew - Right.

Mrs. Wade - Because you indicated you might use some of that space for receptions and things. I just assumed that the people in there were going to be doing that and not renting out a hall.

Mr. Merrithew - I think the applicant would best answer their intent on that, but that was our understanding, as well.

Mrs. Wade - Okay.

Ms. Dwyer - Any other questions for Mr. Merrithew? Okay. Would the applicant come forward, please?

Mrs. Wade - Now, don't show us something and disappoint us. We don't like to be disappointed.

Mr. James W. Theobald - I don't think Highwoods has disappointed you so far. For the record, my name is Jim Theobald. I am here on behalf of Highwoods. Paul Kreckman is here with me this evening, and Penny Koch.

This really is an opportunity to straighten out the types of retail that might occur on this site. Mr. Merrithew accurately told you that this is already zoned M-1. There is an approved POD

on this site. And the building that you see before you is consistent with that POD, and I'll show you some more elevations and a site plan.

What we found was that, through the amalgamation of this piece, and selling off others, we ended up with four different cases that each had slightly different proffers, particularly with regard to retail that would affect the whole.

And, those proffers, basically, went from the ability to have 40,000 square feet of retail; a portion of that 40,000 square feet having been used by, I think, the Great to Go down on Nuckols Road that's, I guess, proposed, or whatever to another case that said, "No freestanding retail," but didn't prohibit retail whatsoever in an M-1C District. And then a third case that prohibited retail all together. So, there were very funny lines criss crossing this piece as to where you could have a lot of retail, no retail, and no free-standing retail.

So, in meeting with Mr. Merrithew and Mr. Silber, as to the best way to do this, this really is a proffer amendment, but we thought that for enforcement and understanding, that we would just rezone it from M-1C to M-1C, restate the proffers that were applicable to all the underlying cases, and straighten out the one with regard to retail.

And, John, maybe we could go to the site plan. This is really the signature buildings for Highwoods last site undeveloped on the lakes. What you can see, of course, is the lake up at the top of your screen. In the white is actually the building footprint.

And this is a very interesting design, sort of like you might see in various European cities with sloping or scalloping public areas in the middle; sort of acting as the madock vocal point for this whole development that walks down gradually to the lake.

And the idea with this request, in terms of this rather complicated use restriction paragraph, was, in order to do outside receptions, you needed to stick with the M-1-type requirements, because when you incorporate the O-3 standards for retail, they must be in an enclosed building.

And, so, when you look at the syntax of this proffer, basically, we said that retail uses are going to be limited to those, as regulated by the reference, being to the O-3 section. But we excluded food service uses such as: catering, meeting, reception, and banquet facilities, cafeterias, restaurants, and outdoor entertainment, with limited retail uses associated therewith, as may be permitted by the County. Some of those uses may require a special use permit, along the way, for any one to do them.

And, so, we tried to carve those out so they would still be regulated by the M-1 standards. But then, we, again, in the following sentence came back and said that, "Oh, by the way, as for cafeterias and restaurants, those will continue to be regulated with regard to the 20 percent limitation.

And, what Highwoods has found in Innsbrook, most significantly with Capital One, but with Markel and other tenants as well is, what these corporate tenants are seeking to do to provide an amenity package for their employees, because, as we all know, employees are very difficult to find and keep.

And, so our tenants are building interesting things; break areas with active and passive entertainment in them. Food service opportunities, so they don't have to get in their car and get back out onto Nuckols Road. And the companies in Innsbrook are all embarking upon a significant amount of training and educational facilities that often require large spaces to be set up for classrooms, banquets and receptions to be held. And so, after input from Mr. Silber, Mr. Merrithew, and Susan Blackburn, all of whom were in the meeting, this was the best that our collective efforts could come up with in describing and regulating what we did and did not want to do.

Again, the POD has already been approved for this, and its already zoned. You could slice a line diagonally through here and have all the retail you wanted over in that corner of the building over there. You couldn't have any freestanding retail over here. And you could have no retail over there (all referring to slide).

That's what we're attempting to accomplish. I think we may have some other elevations you might be interested in seeing here showing the back of the buildings looking from the lake. This is such a wonderful opportunity to use the vista and the open space to create this really last great facility on the lake out at Innsbrook. The use of the public areas, I think, is consistent with the things we talk about every month here. That's what we've tried to capture in these conditions.

So, maybe with that, I'll try to respond to any questions. And, certainly, Mr. Kreckman can also, perhaps, answer questions about Highwoods' plans for this site.

Ms. Dwyer - Any questions for Mr. Theobald? If I may follow up on my earlier question to Mr. Merrithew. The way I read it, there's no limit to the square footage that could be dedicated to catering, meeting, reception, banquet, and outdoor entertainment? Is that right?

Mr. Theobald - Correct.

Ms. Dwyer - In the last sentence in the first proffer, where we say, "...Food related activities are intended to be secondary, and intended to principally serve employees of Innsbrook..." What is, I guess, the legal effect of saying what your intentions are?

Mr. Theobald - Well, this was the subject of some discussion between me and Mr. Merrithew. In fact, the two of us came up with this sentence. And the idea was that, if we were to suddenly open a facility that invited the public, as opposed to really the people in Innsbrook. They have other tenants from other Highwoods properties. Should a tenant whose already in Innsbrook be a major tenant here, he would have the opportunity of including people within the park functions. Now, obviously, you're not going to know who comes in to attend one of your functions. But, the idea was, if this was used in such a way that you all knew we were,

basically, catering our retail facilities to people unrelated to Innsbrook, that this would give you some enforcement powers to come in and, basically, shut us down. So, we're trying to put it on the record, and make it a part of this. And in the best scenario, we could tell you what we didn't want to do.

Ms. Dwyer - I guess I'm concerned about how that would be enforced; the statement of intention, and, it might be an alternative to that, or in addition to that. Maybe a statement could be made about not inviting the general public to say, "An Innsbrook After Hours," not publicizing or advertising that—a concert, for instance, that would be advertised on the radio and invite the general public.

Mr. Theobald - Of course, part of this site is where the pavilion is and will be displaced by one of the wings. But, at the same time, when somebody puts a menu out or whatever, and people come in, I really don't want to get into the situation of whether someone is advertising to the general public. I don't know how to advertise to the general public of Innsbrook, and not the general public per se.

Ms. Dwyer - I don't think that would be as easy to decipher as determining what an event is. I mean, if you advertise on radio, that's, obviously, public. If you're advertising in the Innsbrook Newsletter or, you know, any sort of flier communication for Innsbrook Office; actually, that would still involve a lot of people.

Mr. Theobald - If I have a delicatessen in the building?

Mrs. Wade - Suppose they did use it for that? What would be the harm?

Ms. Dwyer - Well, it's my impression that they're intending not to do that. And I was just thinking maybe there's a different way to express that. And, I guess, why are you not intending to do that? I guess the reason would be, I think the original traffic concerns would relate to this zoning case. It has one access to Nuckols Road. You had people pouring in.

Mrs. Wade - They do have limited access. I've been concerned about that, but...

Ms. Dwyer - Yes. That's a reason not to have the general...

Mr. Theobald - We're so far off Nuckols Road back up against I-295, we're not exactly going to be a destination, or, I guess, an impulse-type user. What we want to have is a signature office complex that has, frankly, some ancillary retail uses that are going to be of benefit to the people who are there. And, given its location, that's functionally all you're going to get.

Ms. Dwyer - Mr. Merrithew, do you have any observations?

Mr. Merrithew - Well, I was just saying, I think, from our interpretation point of view, when zoning enforcement looks at this statement, that leaves enough room for us to make a determination, whether we feel a use coming to that building is exposing itself too much to the general public and advertising too much to the general public. I think the intent statement leaves it in our court to make a determination when they come in for an approval. And, if they don't like our interpretation, then, they're going to you, or the Board, which gives us some discretionary ability and also the guidance through the intent statement to make a determination. I certainly wouldn't argue that its legally sound. But, from zoning interpretation and planning, I like to see an intent statement that gives us some room to maneuver, but tells us what the objective really is.

Ms. Dwyer - I think I'd be more comfortable, personally; I don't want to belabor it. But I would say, "...The food activities are to be a secondary use...or are to principally serve.." "Intention," that word bothers me.

Mrs. Wade - The County Attorney didn't seem to focus on that as he usually does.

Mr. Merrithew - We had tried to talk about a prohibition on the advertising, or marketing. I think you and Jim have had that conversation. How do you say, "You're not marketing," when people are getting fliers or menus or something for a special event? We thought we could try something that way. We're certainly willing to look at it.

Ms. Dwyer - If you had a lot of people, how many employees are there in Innsbrook?

Mrs. Wade - Thousands.

Ms. Dwyer - Yes, thousands.

Mrs. Wade - Five or eight thousand, something like that.

Mr. Merrithew - Okay. I'm not going to guesstimate.

Ms. Dwyer - 20,000.

Mr. Merrithew - 20,000 employees.

Mrs. Wade - 20,000 out here?

Ms. Dwyer - 20,000 coming to a function here.

Mr. Theobald - Wouldn't you rather see them stay in Innsbrook, though, than get back out on Broad Street or Cox Road? I mean, that's the whole purpose to keep it onsite.



Ms. Dwyer - So, you don't want more than 20,000?

Mrs. Wade - 20,000 now. I'm way behind times.

Ms. Dwyer - The only reason I bring it up is because of the access.

Mr. Merrithew - Yes. That is a concern.

Ms. Dwyer - And that was the original, I guess, impetus for limiting retail. But, I mean, Lakebrook Drive could handle 20,000 people?

Mrs. Wade - You're right. The access is limited...in the beginning.

Ms. Dwyer - Okay.

Mrs. Wade - If you've got that there, people might get discouraged.

Ms. Dwyer - But it's a beautiful building.

Mr. Merrithew - Are you concerned about a permanent facility, such as a permanent banquet hall?

Ms. Dwyer - That may regularly have large numbers of people coming in using that area of Nuckols Road. I guess, having been through the Overlook case with these people on Sadler Road, I'm a little more aware of the access issue.

Mr. Merrithew - Yes.

Mr. Archer - Madam Chairman, if the language were amended to just remove the word, "intended," would that make you feel more comfortable? For example, if you were to say in that last sentence, "...the special event, occasional food related activities would be a secondary use to the office use...?"

Ms. Dwyer - I think that would be a more affirmative statement.

Mr. Archer - ..."an to principally serve employees," and take out that second, "intended?"

Mr. Theobald - That can certainly work. We can change that to read, "Food related activities are to be a secondary use, or shall be a secondary use to the office use and also principally serve employees and employers in Innsbrook Office Park area."

Mr. Archer - I think that makes it a little more direct.

Mr. Theobald - I would have no problem doing that.

Ms. Dwyer - It is an M-1?

Mr. Theobald - Already.

Mr. Merrithew - It's still going to leave the staff to interpret what "secondary" means and "principal," means.

Ms. Dwyer - But, I think that leaving out the "intended" helps.

Mr. Merrithew - I don't argue with attorneys.

Ms. Dwyer - What?

Mr. Merrithew - I don't argue with attorneys.

Mr. Theobald - Now, that he's leaving.

Ms. Dwyer - He looks relaxed this evening.

Mrs. Wade - It's amazing how relaxed people look when they leave.

Ms. Dwyer - So, could you just read that for us, Mr. Theobald?

Mr. Theobald - Yes ma'am. "The food related activities shall be a secondary use to the office use and..." Strike the words, "also intended to." And so it will read, "...and principally serve employees and employers in the Innsbrook Office Park area." "...and shall principally serve..." Okay. Two shall's in there.

Mrs. Wade - Get rid of the split infinitive that way.

Mr. Theobald - Okay.

Mrs. Wade - So, you're submitting that tonight?

Mr. Theobald - Yes ma'am. I need to mark up the file copy and initial it.

Ms. Dwyer - Any other questions for Mr. Theobald? Okay. Ready for a motion?

Mrs. Wade - Yes. This certainly seems reasonable. It allows a little more flexibility and variety of uses in the Innsbrook area. It indicates it will deal primarily with the

office use that's to occur here. We look forward to seeing the final product. I move, therefore, that Case C-48C-99 be recommended to the Board for approval.

Ms. Dwyer - Mrs. Wade, do we need to waive time limits on this?

Mrs. Wade - Excuse me. Yes. We do. I'm sorry. I move we waive the time limit for the amended proffer.

Mr. Archer seconded the motion.

Ms. Dwyer - Acting on a motion by Mrs. Wade, seconded by Mr. Archer to waive the time limit. All those in favor of the motion say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

Mrs. Wade - And I move also that C-48C-99 be recommended for approval.

Mr. Archer seconded the motion.

Ms. Dwyer - Acting on a motion by Mrs. Wade, seconded by Mr. Archer to recommend C-48C-99 to the Board. All those in favor of the motion say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Quesinberry absent, Mr. Donati abstained). The motion carries.

REASON: Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors **accept the proffered conditions and grant the request** because it is reasonable; and it continues a form of zoning consistent with the area.

Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall, the March 23, 1999 POD minutes were approved as corrected.

Acting on a motion by Mrs. Wade, seconded by Mr. Archer, the April 20, 1999 POD minutes were approved as corrected.

Acting on a motion by Mrs. Wade, seconded by Mr. Archer, the May 13, 1999 Rezoning minutes were approved as corrected:

Page 113, Line 5031 - It should say, "Yes. It's exclusive to the rear yard."

The June 10, 1999 Zoning Minutes were deferred to July 28, 1999.

Mr. Marlles - The last item, and it is not on the agenda, is we have received a request from Angela Harper. Each of you should have received a letter that was sent from Angela to the members of the Commission on July 12<sup>th</sup> asking that we set a special

meeting for a work session, as well as, a date for public hearing for proposed amendments to the zoning and Subdivision Ordinances.

And these particular amendments would implement the recommendations that were made to the Board of Supervisors at their work session on May 11<sup>th</sup> which, I believe, a number of you attended.

Angela, in her correspondence, has, at least suggested, that the date for the special meeting could be either August 3<sup>rd</sup> or August 4<sup>th</sup>. If staff has a preference, it would probably be that the meeting be on Wednesday August 4<sup>th</sup>.

She has also requested that we schedule a public hearing on the Proposed Ordinance Amendments. I believe, it's for the August 25<sup>th</sup> meeting.

Ms. Dwyer - So the August 3<sup>rd</sup> meeting would be in addition to our other meetings?

Mr. Marlles - That is correct.

Ms. Dwyer - What do y'all think about that?

Mr. Vanarsdall - If she says, August 3<sup>rd</sup> or 4<sup>th</sup>, either day would suit me.

Ms. Dwyer - Do you mind having an extra meeting in August?

Mr. Vanarsdall - We were trying to get out of one, weren't we, Chris?

Mr. Archer - Yes. We were.

Ms. Dwyer - I think she didn't want to have it on the POD day. Do you remember why, Mr. Marlles, rather than the later Zoning day, because usually we're so late, I guess.

Mr. Marlles - I think, its my understanding, she wanted to be sure that there'd be ample opportunity to discuss the proposed amendments with the development community and the Commission.

Ms. Dwyer - What does our agenda look like in August? It is light as tonight?

Mr. Merrithew - Yes. As a matter of fact, it is. I think there's only six new cases.

Ms. Dwyer - How many subdivisions do we have?

Mr. Merrithew - Well, you deferred to the POD the only subdivision that I got tonight. I don't have any on the agenda.

Ms. Dwyer - That's what took the time, tonight.

Mr. Merrithew - Nine cases in total.

Ms. Dwyer - We probably should go ahead and have a special meeting. What do you think, rather than do that?

Mrs. Wade - Yes. I don't care. That's fine.  
Mr. Archer - Mr. Merrithew's last day is on the second, right?

Mr. Merrithew - That's right. I vote for the 4<sup>th</sup>.

Mrs. Wade - On the 4<sup>th</sup>, that's fine. What time did we say?

Ms. Dwyer - When's a good time?

Mr. Archer - Are we looking at the afternoon?

Ms. Dwyer - Well, I guess its up to us.

Mr. Archer - Yes. I guess it is.

Mrs. Wade - Who all is going to be there now?

Mr. Marlles - The Planning Commission and representatives of the development community will be invited as well.

Mrs. Wade - Staff?

Mr. Marlles - And staff.

Mr. Archer - Well, why don't we do it in mid-afternoon so the staff won't have to stay over. I'm being generous.

Ms. Dwyer - 2:00 o'clock?

Mr. Archer - 3:00.

Mr. Vanarsdall - Did you say 3:00?

Mr. Archer - Yes.

Ms. Dwyer - Is that okay? Would you rather do it in the morning or afternoon?

Mr. Merrithew - Afternoon is probably pretty good.

Ms. Dwyer - Is 3:00 o'clock fine? On the 4<sup>th</sup> at 3:00. And how much time do we think that will take – an hour or two?

Mr. Marlles - An hour and a half should be sufficient.

Mr. Archer - The Manager's Conference Room?

Ms. Dwyer - Where will we meet?

Mr. Marlles - The Manager's Conference Room if its available.

Mr. Archer - Okay.

Ms. Dwyer - All right, and then we will plan to have the public hearing on August 25<sup>th</sup>, is that right? Should we go ahead and set that?

Mr. Vanarsdall - That's the POD. Either before or after at a specified time at regular POD.

Ms. Dwyer - Do you know what our regular POD schedule looks like?

Mr. Merrithew - No. I don't.

Mr. Marlles - And I don't either.

Ms. Dwyer - Do you want to schedule it for 1:00 o'clock?

Mr. Archer - Lets.

Mr. Marlles - That's what we've been doing in the past.

Ms. Dwyer - Maybe 2:00 o'clock.

Mr. Archer - Well, let's schedule it for 1:00, and see what happens.

Mr. Merrithew - It strikes me that they weren't coming in with two cart loads of plans, so 1:00 o'clock is probably safest.

Ms. Dwyer - 1:00 o'clock for the public hearing.

Mrs. Wade - After the POD. If we're lucky, we get lunch.

Mr. Archer - I had that in mind.

Ms. Dwyer - This is more recent than what she's...No. It's the same thing, John. The same date anyway.

Mr. Marlles - Okay. She may have given me these for the development community.

Ms. Dwyer - Anything else?

Mr. Merrithew - Just a reminder. Mrs. Dwyer has responded to my inquiries about multi-family. Mrs. Wade has gotten my reminder call and will be responding. Mr. Archer and Mr. Vanarsdall, I have not called to remind you. At the last meeting, you were asked to provide me with your comments about the qualities of multi-family development, features or issues you thought we should address in our discussion of multi-family housing and improving the design standards. I suggested you could either give me an idea of what you thought were the features that we should address or the issues we should try to resolve, or give me examples or the best and worse multi-family projects. This will not go public. Good and bad examples of multi-family projects that you thought we could use to sort of develop our issues and our ideas for...

Ms. Dwyer - Westham Green might be a good example.

Mr. Merrithew - Okay.

Mrs. Wade - Now, of course, anything we changed would not apply to things already zoned and not developed?

Mr. Merrithew - Well, that will have to be a discussion or whether—It probably will be effective the date of the adoption and thereafter.

Ms. Dwyer - So, it might mean that if its zoned for multi-family and then development, but there's no POD on it or anything, then the new development standards, there might be some question about it.

Mr. Merrithew - And if that needs to be softened, then we'll have to add language.

Mrs. Wade - That will attract some attention, I expect.

Mr. Merrithew - And Mrs. Quesinberry has given me here comments which reflected yours quite closely in terms of open space and recreational amenities.

Ms. Dwyer - Those are the two main issues.

Mrs. Wade - Yes. The two main things.

Mr. Merrithew - But, I would appreciate it if Mr. Archer and Mr. Vanarsdall and Mrs. Wade if you could get back to me, if not tomorrow, early next week so I can prepare for the POD meeting and work with Jo Ann to get ready for that.

Mrs. Wade - Are you going to be in the office in the morning?

Mr. Merrithew - In the morning, yes, I will.

Ms. Dwyer - Are you getting a vacation afterwards, or are you going from the "frying pan in to the fire?"

Mr. Merrithew - I get two days and then I go to the 5<sup>th</sup> for orientation, which is always a vacation. So, I get two or three days.

Ms. Dwyer - Is it kind of like going home?

Mr. Merrithew - No. It's not. No. The more I drive up there, the less it feels like home.

Ms. Dwyer - You're going to miss us.

Mr. Merrithew - I am going to miss working with this Planning Commission.

Ms. Dwyer - May I ask you a couple of questions? What's the status of the studies for Nine Mile Road and Williamsburg Road?

Mr. Merrithew - Nine Mile Road is being implemented in two ways: One, I have drafted some design guidelines, policy language and have begun to draft an overlay district for the road, to implement some of those design guidelines. We are also pursuing an Enterprise Zone, if you will, with the State. And we're actively pursuing that. That's probably the first thing that will be really implemented there. I guess that's going to the City soon. The City and the County are joining on this Enterprise Zone. And the City has to approve it and then we go to the State. It's pretty well a lock to getting it. It's just a question of going through the paper work; all the red tape to get to the zone.

Mr. Archer - And the County bought the theatre. Right?

Mr. Merrithew - The County bought the theatre; a great old building.

Ms. Dwyer - And Williamsburg Road?

Mr. Merrithew - The Williamsburg Road Study, we are going to coming forward to you with the design guidelines portion of that study. The land use and transportation recommendations are going to be held back and be worked on some more. But, Mr. Donati has asked us to proceed with the design guidelines and try to get them in place.



Again, we have those drafted. We got those from the consultant. We're going to try and dust them off and clean them up, and put some local contacts to some of them and bring them to you as a Plan Amendment for the corridors.

Ms. Dwyer - What about, I think it was last month. My memory was refreshed since I looked at the minutes. I was asking if anybody has done a study of the impact on the school system, if we had full buildout of all subdivisions that have been approved? And, apparently, somebody was looking at that?

Mr. Merrithew - We have done that for the northwest of the County, the Nuckols Road corridor, if you will. Everything Pouncey Tract west to the County line. We did that for School to help them prepare for their C.I.P. and I can give you that information. We have not pursued a County-wide build-out, that I've been involved in.

Ms. Dwyer - Okay. I really think that's probably the most critical area, at this point.

Mr. Merrithew - I can provide those numbers to you.

Ms. Dwyer - We need more than just west of Pouncey Tract. I mean east of Pouncey Tract...

Mr. Merrithew - It's everything, basically, from the landfill site, if you will, west to the County line, including both sides of Pouncey Tract.

Ms. Dwyer - Okay. Including Wyndham?

Mr. Merrithew - Wyndham, and the Twin Hickory area; what's left in there, and north of Wyndham.

Ms. Dwyer - Yes. I would like to see that.

Mr. Merrithew - I'd be glad to give you those numbers.

Ms. Dwyer - One final question, fellow Commissioners, bear with me, I was reading this article in the paper. I didn't write the date, which I should have done. I just cut it out. It was talking about Chesterfield, you know, has the cash proffers. They require \$6,200 per home for subdivisions for rezonings.

Mr. Merrithew - It's a pittance.

Ms. Dwyer - He was saying there has been little change in the net cost of providing schools, roads, libraries, parks and fire stations. The cost rose from \$6,500 to \$6,600

per home, according to the County's budget office, which used a computer model to tract the figures. Do we do anything like that in Henrico?

Mr. Merrithew - Not at this point.

Ms. Dwyer - Are we going to?

Mr. Merrithew - Yes. We are going to look into it. The County Manager's Critical Issues Task Force includes a task force that is looking at revenue generation through economic development and growth management or new development or something like that.

Ms. Dwyer - Which task force is that? The County Manager's...

Mr. Merrithew - The County Manager's Critical Issues Task Force. He has eight task forces dealing with specific areas of concern in the future. One of them is revenue generation. And Rita Busher is heading up a group that is looking at that specific question and will be looking at a fiscal impact model. Reta Busher. And, so, we're opening a door to a discussion about the fiscal impact of development. I would tell you, its' not going to be soon.

Ms. Dwyer - It's really complex, and there's a lot of...

Mr. Merrithew - You can do a simple model, or you can do a complex model, just depending on the assumption you want to use. But, it's a philosophy that has to be discussed before we get into the mechanics.

Ms. Dwyer - A policy decision on that.

Mr. Merrithew - Absolutely.

Mr. Marlles - At some of our previous work sessions with the Board, I think there is a fair amount of interest from the Board, at least, in terms of having some type of fiscal impact analysis done. It's got their interest. I mean, how far we're able to go with it, we don't know.

Ms. Dwyer - We ought to be doing at least what Chesterfield is doing.

Mr. Merrithew - Chesterfield says that \$6,200 is covering the cost of their schools and roads?

Ms. Dwyer - \$6,500, \$6,600.

Mr. Merrithew - That's surprising.

Ms. Dwyer - Per house. You think that's low?

Mr. Merrithew - Well, the model that I'm used to, took in general government administration, Police, Fire and other things as well. It just depends on the locality.

It got very complex. It took five years to approve the assumptions that went into the model; get the community talking about them. But it can be done.

Ms. Dwyer - Well, that's all I have.

Acting on a motion by Mr. Vanarsdall seconded by Mr. Archer, the Planning Commission adjourned its meeting at 10:00 p.m. on July 15, 1999.

---

Elizabeth G. Dwyer, C.P.C., Chairwoman

---

John R. Marlles, AICP, Secretary

**Last revised August 16, 1999.**